TO: JOINT LEGISLATIVE AUDIT COMMITTEE  
DATE: January 21, 2022  
SUBJECT: Sunset Review of the Arizona State Board of Funeral Directors and Embalmers

Attached is the final report of the sunset review of the Arizona State Board of Funeral Directors and Embalmers (Funeral Board), which was conducted by the Senate Commerce Committee of Reference. A performance audit of the Funeral Board was conducted by the Office of the Auditor General (Report No. 20-110).

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona  
The Honorable Douglas A. Ducey

President of the Senate  
Speaker of the House of Representatives  
Senator Karen Fann  
Representative Russell Bowers

Senator J.D. Mesnard, Chair  
Senator Sonny Borrelli  
Senator Sean Bowie  
Senator Rosanna Gabaldon  
Senator Theresa Hatathlie  
Senator David Livingston  
Senator Tyler Pace  
Senator Raquel Terán  
Senator Michelle Ugenti-Rita

Arizona State Board of Funeral Directors and Embalmers  
Office of the Auditor General  
Arizona State Library, Archives and Public Records

Senate Resource Center  
Office of the Chief Clerk  
Senate Republican Staff  
House Republican Staff  
Senate Democratic Staff  
House Democratic Staff  
Senate Research Staff  
House Research Staff
Background

Pursuant to A.R.S. § 41-2953, the Joint Legislative Audit Committee assigned the sunset review of the Arizona Board of Funeral Directors and Embalmers (Funeral Board) to the Senate Commerce Committee of Reference and the House Commerce Committee of Reference.

The Funeral Board licenses and registers funeral directors, embalmers, interns, embalmer's assistants, cremationists, funeral establishments and crematories. The Funeral Board must: 1) administer and enforce statutory requirements and rules; 2) adopt rules relating to standards of practice, professional conduct, competence and consumer disclosure; and 3) investigate violations and take disciplinary action as outlined (A.R.S. Title 32, Chapter 12).

The Funeral Board membership consists of seven, governor-appointed members for four-year terms. Board members must be Arizona residents. Three members must be practicing, licensed funeral directors or embalmers and four members must be public members who have not been licensed by the Board in the previous five years. One of the public members must own or manage a business that has no pecuniary or proprietary interest in a funeral establishment or crematory or in the sale of funeral goods and services (A.R.S. § 32-1302).

The Funeral Board is statutorily set to terminate on July 1, 2022, unless legislation is enacted for its continuation (A.R.S. § 41-3022.22).

Committee of Reference Sunset Review Activity

Pursuant to A.R.S. § 41-2954, the Senate Commerce Committee of Reference met on Wednesday, January 19, 2022, to review the Auditor General's Performance Audit and Sunset Review Report, consider the Funeral Board's responses to the statutorily-outlined sunset factors and receive public testimony.

Committee of Reference Recommendations

The Senate Commerce Committee of Reference recommended that the Funeral Board be continued for two years until July 1, 2024.

Appendices

1. Meeting Notice
2. Presentation by the Office of the Auditor General
3. The Funeral Board's response to additional sunset factors
ARIZONA STATE SENATE

INTERIM MEETING NOTICE
OPEN TO THE PUBLIC
SENATE COMMERCE COMMITTEE OF REFERENCE

Date: Wednesday, January 19, 2022
Time: 2:00 P.M.
Place: SHR 1

Members of the public may access a livestream of the meeting here:
https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2022011048

AGENDA

1. Call to Order
2. Roll Call
3. Approval of Minutes
4. Sunset Review of the Arizona Office of Tourism
   • Presentation by the Office of the Auditor General
   • Response by the Arizona Office of Tourism
   • Public Testimony
   • Discussion and Recommendations
5. Sunset Review of the Arizona State Board of Funeral Directors and Embalmers
   • Presentation by the Office of the Auditor General
   • Response by the Arizona State Board of Funeral Directors and Embalmers
   • Public Testimony
   • Discussion and Recommendations
6. Adjourn

Members:

Senator J.D. Mesnard, Chair
Senator Sonny Borrelli
Senator Sean Bowie
Senator Rosanna Gabaldon
Senator Theresa Hatathlie
Senator David Livingston
Senator Tyler Pace
Senator Raquel Terán
Senator Michelle Ugenti-Rita

01/13/2022
hf

For questions regarding this agenda, please contact Senate Research Department. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.
Arizona Board of Funeral Directors and Embalmers

Presenter: Marc Owen
Date: January 19, 2022

Board’s key regulatory responsibilities

- Licensing and registering funeral professionals and businesses
- Inspecting funeral establishments and crematories
- Investigating and adjudicating complaints
- Providing information to the public
Board did not ensure applicants met all requirements

- Did not always perform criminal history records check
- Did not inspect all businesses before licensure
- Did not verify that some applicants met experience requirements

Board did not verify surety bond requirement met

- Approved funeral establishments to sell prearranged funeral agreements **without** ensuring surety bond amounts met statutory requirements
- Prearranged funeral agreement involves payment for services before death
- Surety bonds protect customers who have purchased prearranged funeral agreements
Causes for these problems

- Misinterpreted licensing requirements
- Applications did not include all requirements
- Lacked comprehensive guidance and supervisory review process

Key recommendations

- Revise applications and develop policies that address all requirements
- Implement a supervisory review process
Board did not properly perform inspections

- Some requirements not assessed during inspections
- Inspections inaccurately documented

Some inspections not conducted timely

- 5 of 30 businesses we reviewed were overdue for an inspection
- 3 of these businesses had not been inspected for more than 7 years
Key recommendations

- Conduct timely inspections that address all requirements
- Accurately document inspections
- Develop policies and procedures

Other recommendations

- Continue to implement new conflict-of-interest policies and procedures
- Review fee amounts
Arizona Board of Funeral Directors and Embalmers

Presenter: Marc Owen
Date: January 19, 2022
October 1, 2021

Sent via Email
Mr. Paul Benny
Arizona House of Representative
1700 West Washington
Phoenix, Arizona 85007

Dear Mr. Benny,

Please allow this to serve as the Arizona State Board of Funeral Directors and Embalmers (“Board”) amended response to the additional required factors for the Sunset Review identified in your June 18, 2021 letter.

1. **An identification of the problem or the needs that the agency is intended to address.**

   In 1909, on behalf of the people of Arizona, the legislature created the Arizona State Board of Embalmers. In 1945, under Governor Sidney P. Osborn, the Board’s jurisdiction was expanded when the Legislature created the Arizona State Board of Funeral Directors and Embalmers. The Board now regulates the practices of the death care profession by issuing licenses to those who meet the minimum requirements and by holding those licensed professionals to the standards set forth in the Board’s statutes and rules. By doing these things, the Board assures the public that the practices associated with the funeral industry will be conducted with appropriate skill and respect by persons who meet the educational requirements and/or industry standards to practice in the profession and care for our decedents.

   The Board’s mission is to “maintain and enforce a set of standards that provides protection for the health, safety and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and service.” To achieve this mission, the Board focuses on four (4) main responsibilities:

   1. Licensing and registering professionals and licensing and endorsing facilities
   2. Conducting Inspections
   3. Resolving Complaints
   4. Providing information to the public

   “To Maintain and enforce a set of standards that provides protection for the health, safety and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and services.”
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

The Board implements policies and procedures that aid in reaching its mission and ensuring that focus is maintained on the Board’s responsibilities. This practice guarantees that the safety and welfare of the public is upheld, which is the Board’s core objective.

(1) Licensing and Registering Professionals and Licensing and Endorsing Facilities

Board staff receives and reviews all initial applications for licensure to verify that statutory requirements regarding education, training, citizenship, and good moral character have been met. Staff also receives original fingerprint cards and provides the cards to DPS to have the required background checks completed. All applications are confirmed to be administratively complete before being placed on a meeting agenda for consideration by the Board. The Board meets every month and grants licensure at that time.

On average, the Board receives 200 initial applications a year. The average number of days to administratively process an application is two and the average number of days to substantively process an application is 53. Below is a table outlining the number of initial applications the Board received from 2018 – 2021:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Initial Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>214</td>
</tr>
<tr>
<td>2019</td>
<td>215</td>
</tr>
<tr>
<td>2020</td>
<td>117*</td>
</tr>
<tr>
<td>2021</td>
<td>168 (As of September 13, 2021)</td>
</tr>
</tbody>
</table>

* The number of applications received in 2020 is not a true representation of the average amount of applications the Board typically receives. The decline in applications is a direct result of the impact of COVID-19. The Board has already received more initial applications in 2021 than it received in 2020.

The Board also processes license renewals annually. The renewal period starts on May 4th and continues through August 1st. Every renewal application is reviewed and processed by Board staff; verifying that all required documentation is provided and that the continuing education requirement is met.
On average, 1,610 licenses are renewed a year. Below is a table outlining the number of renewal applications the Board received from 2018 – 2021:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Renewal Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>1,468</td>
</tr>
<tr>
<td>2019</td>
<td>1,639</td>
</tr>
<tr>
<td>2020</td>
<td>1,701</td>
</tr>
<tr>
<td>2021</td>
<td>1,631</td>
</tr>
</tbody>
</table>

The Board has ten (10) license types that it issues and/or renews. On average, the Board has 1,800 licensees/registrants. As of September 13, 2021, the number of licensed/registered individuals was 1,714. Below is a breakdown of the current license numbers by type of licensure/registration:

- Intern: 41
- Funeral Director: 472
- Multiple Funeral Director: 22
- Embalmer: 487
- Embalmer Assistant: 8
- Cremationist: 318
- Salesperson: 90
- Funeral Establishment: 182
- Funeral Establishment Sales Endorsement: 38
- Crematory: 56

(2) Conducting Inspections

Pursuant to A.R.S. §§ 32-1307(A)(5)(h) and 32-1383, the Board conducts inspections on new and existing establishments and crematories to ensure that the facilities are within compliance of the statutory requirements. As a prerequisite for licensure, all new facilities must be inspected before the application can be considered administratively complete and placed on a meeting agenda for consideration by the Board. New facilities include licensed establishments and crematories that have either been sold or transferred ownership, in addition to brand new facilities that are just being opened. The Board’s statutes and rules require that inspections for existing facilities be completed once every five years, unless otherwise warranted due to the nature of a complaint, investigation or other circumstance received which may give rise to possible noncompliance.

Board staff tracks the dates of when inspections are completed and uses this information to determine when an inspection should be completed again. After each monthly Board meeting, Board staff reviews the tracking sheet and informs the investigator of what inspections need to be conducted in the following month. The Board’s goal is to complete inspections every two-three years, verses every five years, if staff’s time allows.

In December of 2019 the Board entered into an Interagency Service Agreement (ISA) with the Arizona State Veterinary Medical Examining Board (“VET Board”) to have the Board’s investigator inspect
animal crematories. As of September 13, 2021, the Board’s investigator has not yet inspected any animal crematories but intends to coordinate with the VET Board to carry out the ISA and assist in inspecting the fifteen (15) active animal crematories located across all counties of Arizona.

Below is a table outlining the number inspections the investigator has completed from 2018 – 2021:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Inspections Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>33</td>
</tr>
<tr>
<td>2019</td>
<td>70</td>
</tr>
<tr>
<td>2020</td>
<td>38</td>
</tr>
<tr>
<td>2021</td>
<td>72 (As of September 13, 2021)</td>
</tr>
</tbody>
</table>

(3) Resolving Complaints

The Board has jurisdiction pursuant to A.R.S. § 32-1367 to perform investigations and resolve complaints. Upon receipt of a complaint, the Board’s investigator will send out an initial letter to the licensee requesting their written response within 15 days, as well as copies of all applicable documentation, records, etc. Once the investigator has reviewed all the documentation and completed any necessary interviews and/or follow-up, the Investigative Report will be finalized and the complaint will be placed on the next available meeting agenda for the Board’s review.

Although the Board has no actual time frame established in rule for completing investigative cases, absent of pending litigation, complaints are resolved within 6-9 months.

Below is a table outlining the number of complaints the Board has received from 2018 – 2021:

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Complaints Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>28</td>
</tr>
<tr>
<td>2019</td>
<td>40</td>
</tr>
<tr>
<td>2020</td>
<td>64</td>
</tr>
<tr>
<td>2021</td>
<td>33 (As of September 13, 2021)</td>
</tr>
</tbody>
</table>

(4) Providing Information to the Public

The Board continuously reviews procedures and policies to ensure that it is upholding its statutes and rules and educating applicants, licensees and the public regarding the licensing and regulation of the funeral industry. Board staff strives to provide timely service by responding to emails and phone calls within 24-48 hours of receipt, and encouraging people to review the Board’s website. The website includes the following information and is intended to serve as a resource for licensees and the public alike.

- A directory of licensed individuals and businesses (funeral establishments and crematories). The non-confidential information included is name, public address and phone number, status of license,
license number, original issuance date of license and disciplinary actions, if any.
• Public Records Request form that may be submitted for purposes of obtaining copies of public documents.
• Complaint form for submitting complaints for investigation and review.
• Agendas, minutes and audio recordings of open meetings.
• Various Board information and forms for licensure application, license renewal and updating contact information.
• Application and license renewal information, including all master-list approved providers for continuing education courses.
• The Board’s statutes and rules.

3. **An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the matter in which the agency avoids duplication or conflict with other such agencies.**

There are no other boards or agencies within the State of Arizona that perform the function of the Arizona State Board of Funeral Directors and Embalmers. Therefore, there are no conflicts or duplication that need to be addressed at this time.

4. **An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

The consequences of eliminating this Agency would be that the profession would go unregulated. This would be detrimental to the safety and service to the citizens of Arizona. Consolidating with another agency would also be detrimental as the current level of service provided to the licensees and public would suffer. This Board regulates a unique profession that does not fall under the directive of any other agency.

5. **The extent to which the agency potentially creates unexpected negative consequences that might require additional review by the committee of reference, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.**

The Board intends to run legislation within the next two years to request an increase of no more than $50.00 to application and licensure fees; there has not been an increase to the Board’s fees since 1998. This increase is required to assist the Board in financially covering the increases it is experiencing in its operation budget and to hire additional staff that is needed to maintain the daily functions and responsibilities of the Board.

The Board does not believe that a fee increase will have a negative impact on the licensees and registrants or limit their abilities to operate efficiently. Rather this increase would allow the Board to continue to improve on the services it provides to licensed individuals, consumers and the public and to continue in protecting the safety and welfare of Arizona citizens.
6. The ability of the agency to timely investigate and resolve complaints within its jurisdiction.

The Board has jurisdiction pursuant to A.R.S. § 32-1367 to investigate any written complaints that are received, in addition to investigating any information on its own initiative that appears to show the existence of any grounds for disciplinary action. The Board investigates complaints against licensed individuals, establishments and crematories. Consumers, the public, and other licensed funeral providers can submit complaints to the Board via its website. Over the last three years, the Board has experienced a significant increase in the number of complaints it receives. An appropriation for additional staffing has been requested multiple times in an effort to help the Board remain timely in the investigation process; however, no additional appropriation has been provided as of FY22. As a result, the average amount of time required to complete an investigation and resolve a complaint has increased; however, the Board is still within what is considered to be a timely average timeframe for completing investigations.

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502, as amended, transferred and renumbered by Laws 2021, Chapter 176.

The regulation by this Board meets the occupational requirements as set forth in A.R.S. § 41-3502. Termination of this agency would significantly endanger the public and allow people who are not adequately educated or trained to perform funeral arrangements, embalmings and cremations. It would also allow individuals to operate funeral establishments with no oversight, which undoubtedly, would subject the public to financial harm. Consumers are typically in a uniquely vulnerable situation, filled with high emotion, when interacting with members of the funeral industry. It is imperative that these individuals be professional, educated and trained to provide proper care and attention. Regulation by the Board ensures that all licensees are of good moral character and have met the minimum licensing requirements. It also ensures that establishments and crematories are being maintained within compliance, and are providing a clear list of prices and statement of funeral goods and services that show all upfront costs to the consumers. Without the Board, the health, safety and welfare of the citizens of Arizona would be threatened.

“To Maintain and enforce a set of standards that provides protection for the health, safety and welfare of Arizona citizens by educating the consumer and by actively and impartially regulating those licensed to provide funeral goods and services”.
To: Mr. Paul Benny  
RE: Response to Additional Sunset Audit Factors  
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2. The extent to which the failure to regulate a profession or occupation will result in:
   a. The loss of insurance.
   b. An impact to the ability to practice in other states or as required by federal law.
   c. An impact to the required licensure or registration with the federal government.
   d. The loss of constitutionally afforded practices.

Question 2 does not apply to the Board since it does not issue any licenses federally, nor does it affect any federal mandate so there is no loss of insurance, no overt inability to apply for licensure in another state, and no impact to licensure through the federal government. The funeral industry is not a constitutionally afforded practice, it is a privilege granted by licensure and self-chosen education.

Respectfully,

[Signature]

Natasha Culbertson  
Executive Director  
Arizona State Board of Funeral Directors and Embalmers  
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1740 W. Adams Street, Suite 3006  
Phoenix, AZ 85007