

NEWS & INSIGHTS

PA Funeral Board to determine which criminal convictions disqualify someone from being a funeral director - implications for applicants and employers

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The Pennsylvania State Board of Funeral Directors will soon consider which criminal convictions create a presumption that an individual should be denied a funeral director's license.

Historically, an applicant for a professional license who had a criminal conviction frequently was met with an outright denial or a provisional denial, requiring the applicant to appear before the licensing board and explain the conviction and efforts at rehabilitation. This included not only major crimes, but also more minor offenses like shoplifting, simple assault, drug possession and bad checks.

[Act 53 of 2020](#) now provides that licensing boards must first determine whether an applicant's criminal conviction "directly relates" to the profession for which the individual seeks licensure. If so, there is a presumption that the application should be denied because licensure of the individual would pose a substantial risk to the health and safety of clients, the public or a substantial risk of further criminal convictions. The applicant can overcome this presumption through evidence of rehabilitation.

If the conviction is not "directly related" to the profession, the board must make an individualized assessment as to whether licensing the applicant would pose the same substantial risk, based on the nature of the offense, the amount of time that has passed since conviction, rehabilitation efforts and other factors specified in Act 53.

Act 53 requires the Commissioner of the Professional and Occupational Affairs to publish a list of the convictions "directly related" to each profession, after consulting with the relevant licensing board and representatives of the profession.

At its October 28, 2020 meeting, the Funeral Board will consider the Commissioner's proposed [list of offenses](#) that directly relate to the funeral director profession. The list includes more than 50 offenses, but encompasses essentially seven categories: major theft, fraud, bribery, perjury, abuse of corpse, illegal insurance practices and violent crimes.

This proposed list will help people who have minor convictions to get licenses. Offenses arising from shoplifting, DUI and minor bar fights no longer result in a presumptive denial. The only drug offense on the list is drug delivery resulting in death.

But the proposed list also means that funeral homes may no longer rely on the Funeral Board to be the same screening tool it has been in the past. Employers concerned about the criminal records of applicants may need to conduct their own inquiries.

However, other laws may limit employers' ability to do so. For example, the Clean Slate Act, signed into law in 2018, provides for the automatic sealing of certain second and third degree misdemeanors and allows for a petition to seal certain first degree misdemeanors that are 10 years or older. Applicants are not required to disclose sealed records and most employers may not access them. Under other laws, an employer may only consider an applicant's convictions "to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied," and the employer must give written notice if a decision not to hire the applicant is based in whole or in part on criminal history.

Some municipalities, including Allegheny County, Allentown, Bethlehem, Lancaster, Northampton County, Philadelphia, Pittsburgh, Reading and the City of York have also enacted "ban the box" ordinances, precluding employers from asking about an applicant's criminal history on a job application.

Funeral homes and other employers should consider these and other restrictions when conducting criminal background checks on prospective employees.

Written comments regarding the proposed list of offenses directly related to funeral directing must be submitted to the Board by October 21, 2020. Interested parties may also participate in the discussion of the proposed list at the Board's October 28, 2020 meeting.

Saxton & Stump attorneys [Jason Benion](#) and [Morgan Hays](#) are available to discuss the impact of Funeral Board regulations on [death care](#) business and assist funeral homes and cemeteries with [labor and employment](#) issues.

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