

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

HOUSE BILL 315
RATIFIED BILL

AN ACT TO INCREASE THE PUNISHMENT FOR CERTAIN ARSON OFFENSES; TO AMEND THE OFFENSE OF ARSON OR OTHER UNLAWFUL BURNINGS THAT RESULT IN INJURY TO A FIREFIGHTER, LAW ENFORCEMENT OFFICER, FIRE INVESTIGATOR, OR EMERGENCY MEDICAL TECHNICIAN; TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS TO FIRE DEPARTMENTS; TO REQUIRE APPLICANTS TO DISCLOSE CERTAIN CRIMINAL CHARGES; AND TO PROHIBIT APPLICANTS CONVICTED OF CERTAIN CRIMES FROM SERVING AS VOLUNTEER OR PAID MEMBERS OF FIRE DEPARTMENTS.

The General Assembly of North Carolina enacts:

PART I. AMEND ARSON OFFENSES

SECTION 1.(a) G.S. 14-58 reads as rewritten:

"§ 14-58. Punishment for arson.

There shall be two degrees of arson as defined at the common law. If the dwelling burned was occupied at the time of the burning, the offense is arson in the first degree and is punishable as a Class D felony. If the dwelling burned was unoccupied at the time of the burning, the offense is arson in the second degree and is punishable as a ~~Class G felony.~~ Class E felony."

SECTION 1.(b) Article 15 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-59.1. Burning of jails or prisons.

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of a penal institution as defined in G.S. 14-208.6 or its contents, the person shall be punished as a Class D felon."

SECTION 1.(c) G.S. 14-61 reads as rewritten:

"§ 14-61. Burning of certain bridges and buildings.

~~If~~ Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning ~~of, of~~ any public bridge, or private toll bridge, or the bridge of any incorporated company, or any fire-engine house or rescue-squad building, or any house belonging to an incorporated company or unincorporated association and used in the business of such company or association, ~~he~~ the person shall be punished as a Class F felon."

SECTION 1.(d) G.S. 14-62 reads as rewritten:

"§ 14-62. Burning of certain buildings.

~~If~~ Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning ~~of, of~~ any uninhabited house, or any stable, coach house, ~~or outhouse, warehouse, office, shop, mill, barn or granary, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or any branch thereof,~~ whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, ~~he~~ the person shall be punished as a Class F felon."

SECTION 1.(e) G.S. 14-62.1 reads as rewritten:



"§ 14-62.1. Burning of building or structure in process of construction.

~~If~~ Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, of any building or structure in the process of construction for use or intended to be used as a dwelling house or in carrying on any trade or manufacture, or otherwise, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he ~~the person~~ shall be punished as a Class H felon."

SECTION 1.(f) G.S. 14-62.2 reads as rewritten:

"§ 14-62.2. Burning of churches and certain other religious buildings.

~~If~~ Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any church, chapel, or meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship, the person shall be punished as a Class E felon."

SECTION 1.(g) G.S. 14-64 reads as rewritten:

"§ 14-64. Burning of ginhouses and tobacco houses.

(a) ~~If~~ Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, of any ginhouse or tobacco house, or any part thereof, he ~~the person~~ shall be punished as a Class H felon.

(b) The following definitions apply to this section:

(1) Ginhouse. – Any building or structure where cotton is ginned.

(2) Tobacco house. – Any barn, building, or other structure used for curing and aging tobacco."

SECTION 1.(h) Article 15 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-62.3. Burning of commercial structure.

(a) Definition. – For purposes of this section, the term "commercial structure" means any building or structure that is designed principally for the manufacture, distribution, or exchange of goods or services, or for any other business or trade purpose.

(b) Burning of Occupied Commercial Structure. – Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any commercial structure or its contents, and the structure is occupied at the time of the burning, the person shall be punished as a Class D felon.

(c) Burning of Unoccupied Commercial Structure. – Unless the conduct is covered under some other provision of law providing greater punishment, if any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any commercial structure or its contents, and the structure is unoccupied at the time of the burning, the person shall be punished as a Class E felon."

SECTION 1.(i) G.S. 14-66 reads as rewritten:

"§ 14-66. Burning of personal property.

If any person shall wantonly and willfully set fire to or burn, or cause to be burned, or aid, counsel or procure the burning of, of any goods, wares, merchandise or other chattels or personal property of any kind, in any place other than a commercial structure as defined in G.S. 14-62.3, whether or not the same shall at the time be insured by any person or corporation against loss or damage by fire, with intent to injure or prejudice the insurer, the creditor or the person owning the property, or any other person, whether the property is that of such person or another, he shall be punished as a Class H felon."

PART II. ARSON OR OTHER UNLAWFUL BURNING THAT RESULTS IN SERIOUS BODILY INJURY OR SERIOUS INJURY TO A FIREFIGHTER, LAW ENFORCEMENT OFFICER, FIRE INVESTIGATOR, OR EMERGENCY MEDICAL TECHNICIAN

SECTION 2. G.S. 14-69.3 reads as rewritten:

"§ 14-69.3. Arson or other unlawful burning that results in serious bodily injury or serious injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician.

(a) Definitions. – The following definitions apply in this section:

(1) Emergency medical technician. – The term includes an emergency medical technician, an ~~emergency medical technician intermediate,~~ advanced emergency medical technician, and an emergency medical technician-paramedic, as those terms are defined in G.S. 131E-155.

(2) Fire investigator. – The term includes any person who, individually or as part of an investigative team, has the responsibility and authority to determine the origin, cause, or development of a fire or explosion.

(b) Offense Involving Serious Bodily Injury. – A person is guilty of a Class E felony if the person commits a felony under Article 15 of Chapter 14 of the General Statutes and a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers serious bodily injury while discharging or attempting to discharge official duties on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties.

(c) Offense Involving Serious Injury. – A person is guilty of a Class F felony if the person commits a felony under Article 15 of Chapter 14 of the General Statutes and a firefighter, law enforcement officer, fire investigator, or emergency medical technician suffers serious injury while discharging or attempting to discharge official duties on the property, or proximate to the property, that is the subject of the firefighter's, law enforcement officer's, fire investigator's, or emergency medical technician's discharge or attempt to discharge his or her respective duties."

PART III. FIRE DEPARTMENTS/DISCLOSE CRIMINAL HISTORY AND PROHIBIT MEMBERS FROM SERVING IF CONVICTED OF CERTAIN CRIMES

SECTION 3.(a) G.S. 143B-943 reads as rewritten:

"§ 143B-943. Criminal history record checks of applicants to and current members of fire departments and emergency medical services.

(a) Definitions. – The following definitions apply in this section:

(1) Applicant. – A person who applies for a paid or volunteer position with a fire department or an emergency medical service.

(2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering ~~Executive and Legislative~~ Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services

by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 22, Damages and Other Offenses to Land and Fixtures; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(3) Current member. – A person who serves in a paid or volunteer position with a fire department or an emergency medical service.

(b) When requested by a designated local Homeland Security director, a local fire chief of a rated fire department, a county fire marshal, an emergency services director, or if there is no designated local Homeland Security director, local fire chief of a rated fire department, county fire marshal, or emergency services director, when requested by a local law enforcement agency, the North Carolina Department of Public Safety may provide to the requesting director, chief, marshal, ~~director~~, or agency an applicant's or current member's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director, local fire chief, marshal, director, or local law enforcement agency shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, any additional information required by the Department of Public Safety, and a form signed by the applicant to be checked consenting to the (i) check of the criminal record and ~~to the~~ (ii) use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall keep all information pursuant to this section confidential. The Department of Public Safety shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section. The requesting local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency may charge an applicant or current member the fee amount charged by the Department of Public Safety for the criminal history record check of the applicant or current member.

(c) All releases of criminal history information to the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Department of Public Safety. All of the information the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency receives through the checking of the criminal history is privileged information and for the exclusive use of that director, chief, marshal, or agency.

(d) If the applicant's or current member's verified criminal history record check reveals one or more convictions ~~covered under subdivision (a)(2) of a crime listed in subsection (a) of this section, then the conviction shall constitute~~ constitutes just cause for not selecting the applicant for the position or for dismissing the current member from a current position with the local fire department or emergency medical services. ~~The~~ Except as provided in subsection (d1)

of this section, the conviction ~~shall~~ does not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency in determining whether the ~~position applicant~~ shall be denied or the current member dismissed from a current position:

- (1) The level and seriousness of the ~~crime~~; crime.
- (2) The date of the ~~crime~~; crime.
- (3) The age of the person at the time of the ~~conviction~~; conviction.
- (4) The circumstances surrounding the commission of the crime, if ~~known~~; known.
- (5) The nexus between the criminal conduct of the person and the duties of the ~~person~~; person.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was ~~committed~~; and committed.
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(d1) An applicant is prohibited from serving in a paid or volunteer position with a fire department if the applicant's verified criminal history record check reveals a conviction of arson or another felony conviction involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes. A local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency, as applicable, shall request, and an applicant shall disclose, any pending felony charges involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes. Upon becoming aware of pending felony charges, through the required disclosure or by other means, a local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency shall not offer the applicant a paid or volunteer position, except as provided in subsection (f) of this section. This subsection does not apply to an applicant for a paid or volunteer position with an emergency medical service.

~~(e) The local fire department or emergency medical services may deny the an applicant or current member the position or dismiss an applicant or a current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The emergency medical services may extend a conditional offer of the position pending the results of a criminal history record check required by this section.~~

(f) The local fire department shall deny an applicant the position and may dismiss a current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The local fire department or emergency medical services may extend a conditional offer of the position pending the (i) results of a criminal history record check authorized required by this section-section or (ii) final disposition of felony charges disclosed as required by this section or otherwise discovered.

(g) For purposes of this section, "local fire chief" shall include the fire chief of any bona fide fire department certified to the Commissioner of Insurance with at least a Class 9S rating for insurance grading purposes; "county fire marshal" shall include only fire marshals who are paid employees of a county; and "emergency services director" shall include only emergency services directors who are paid employees of a city or county."

SECTION 3.(b) G.S. 153A-233 reads as rewritten:

"§ 153A-233. Fire-fighting and prevention services.

A county may establish, organize, equip, support, and maintain a fire department; may prescribe the duties of the fire department; may provide financial assistance to incorporated volunteer fire departments; may contract for fire-fighting or prevention services with one or more counties, ~~cities, or cities or other units of local government~~ government, incorporated volunteer fire departments, or with an agency of the State government, or with one or more incorporated volunteer fire departments; government; and may for these purposes appropriate funds not otherwise limited as to use by law. A county shall ensure that any county, city or other unit of local government, or incorporated volunteer fire department with whom the county contracts for fire-fighting or prevention services shall obtain a criminal history record check of any person who applies for a paid or volunteer position providing fire-fighting or prevention services. The criminal history record check shall be conducted and evaluated as provided in G.S. 143B-943. The county may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes."

SECTION 3.(c) G.S. 153A-234 reads as rewritten:

"§ 153A-234. Fire marshal.

(a) A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

- (1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.
- (2) Coordinating fire-fighting and training activities under the county's supervision or control.
- (3) Coordinating fire prevention activities under the county's supervision or control.
- (4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.
- (5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of child care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351.

(b) The fire marshal shall obtain a criminal history record check of any person who applies for a paid or volunteer position with the fire department. The criminal history record check shall be conducted and evaluated as provided in G.S. 143B-943."

SECTION 3.(d) G.S. 160A-292 reads as rewritten:

"§ 160A-292. Duties of fire chief.

(a) Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties. If these duties include State Building Code enforcement, they shall follow the provisions as defined in G.S. 143-151.13.

(b) The fire chief shall obtain a criminal history record check of any person who applies for a paid or volunteer position with the fire department. The criminal history record check shall be conducted and evaluated as provided in G.S. 143B-943."

PART IV. SAVINGS CLAUSE AND EFFECTIVE DATE

SECTION 4.(a) Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 4.(b) Sections 1 and 2 of this act become effective December 1, 2022, and apply to offenses committed on or after that date. Section 3 of this act is effective when it becomes law and applies to applications submitted on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of June, 2022.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2022