



# HOUSE BILL 315: Arson Law Revisions.

2021-2022 General Assembly

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<b>Committee:</b>	House Judiciary 3. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	April 21, 2021
<b>Introduced by:</b>	Reps. McNeill, Boles, Saine, Carter	<b>Prepared by:</b>	Susan Sitze
<b>Analysis of:</b>	PCS to First Edition H315-CSSAf-14		Staff Attorney

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**OVERVIEW:** *The Proposed Committee Substitute (PCS) for House Bill 315 would make the following changes to various laws related to arson:*

- *Increase the punishment for certain arson offenses.*
- *Amend the offense of arson resulting in injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician.*
- *Authorize the Commissioner of Insurance, through the Office of State Fire Marshal to investigate fires.*
- *Require criminal history background checks of applicants to fire departments, require applicants to disclose certain convictions, and prohibit persons convicted of certain crimes from serving as a volunteer or paid member of a fire department.*

[As introduced, this bill was identical to S454, as introduced by Sens. Britt, Johnson, Sawyer, which is currently in Senate Rules and Operations of the Senate.]

## **BILL ANALYSIS:**

**Section 1** of the PCS for House Bill 315 would amend various arson statutes as follows:

- Increase the penalty for second degree arson from a Class G felony to a Class E felony. [*Section 1(a)*]
- Create a new Class D felony for burning a penal institution. [*Section 1(b)*]
- Create a new Class D felony for burning an occupied commercial structure, and a new Class E felony for burning an unoccupied commercial structure. A commercial structure would be defined as "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." [*Section 1(i)*]
- Make conforming changes to several existing arson statutes.

**Section 2** of the PCS for House Bill 315 would amend the offense of arson resulting in serious bodily injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician as follows:

- Changing the injury requirement for the Class E felony to "serious injury" rather than "serious bodily injury." There is no definition of "serious injury" in statute.

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- Case law has stated that whether an injury is serious is a question of fact. Serious injury can be physical or mental and relevant factors in determining whether an injury is serious include pain and suffering, loss of blood, hospitalization, and time lost from work.<sup>i</sup>
- Creating a new Class F felony for "serious physical injury." Serious physical injury would be defined as "physical injury that causes great pain and suffering, including serious mental injury."

**Section 3** of the PCS for House Bill 315 would amend various statutes in Article 79 of Chapter 58 of the General Statutes to authorize the Commissioner of Insurance through the Office of the State Fire Marshal to investigate fires.

**Section 4** of the PCS for House Bill 315 would make changes to the law regarding criminal history background checks for applicants for positions with a fire department as follows:

- Require fire departments to conduct a criminal history record check on any applicant for a volunteer or paid position with the fire department.
- Prohibit an applicant from serving in a paid or volunteer position with a fire department if the applicant refuses to submit to a criminal history record check.
- Prohibit an applicant from serving in a paid or volunteer position with a fire department if the applicant's 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.
- Require an applicant to 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, and only allow a fire department to extend a conditional offer of a position pending the final disposition of the pending charges.

**EFFECTIVE DATE:** Sections 1 and 2 of this act become effective December 1, 2021, and apply to offenses committed on or after that date. Section 3 of this act becomes effective October 1, 2021. Section 4 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.

## **BACKGROUND:**

A Class D felony is punishable by an absolute minimum of 38 months active punishment and an absolute maximum of 204 months active punishment, depending on prior record level.

A Class E felony is punishable by an absolute minimum of 15 months intermediate punishment and an absolute maximum of 88 months active punishment, depending on prior record level.

A Class F felony is punishable by an absolute minimum of 10 months intermediate punishment and an absolute maximum of 59 months active punishment, depending on prior record level.

A Class G felony is punishable by an absolute minimum of 8 months intermediate punishment and an absolute maximum of 47 months active punishment, depending on prior record level.

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<sup>i</sup> North Carolina Crimes – A Guidebook on the Elements of Crime (Smith)