



H.B. 433

123rd General Assembly
(As Introduced)

Reps. Britton, Allen, Barrett, Clancy, Flannery, Hartnett, Hollister, Krebs, Smith, Van Vyven, Willamowski

BILL SUMMARY

- Prohibits a fire department operated by a municipal corporation, township, township fire district, joint fire district, or private fire company from appointing a person to serve as a paid or volunteer firefighter if that person previously has served as a firefighter and has been convicted of or pleaded guilty to an arson offense.
- Requires a trial judge (1) to follow specified procedures in connection with arson offense actions relative to defendants who previously served as a firefighter and (2) to provide the clerk of the court with specified information pertaining to those defendants and their convictions or guilty pleas or to another final disposition of their actions.
- Requires the State Fire Marshal to compile a list of defendants who previously served as a firefighter and who have been convicted of or pleaded guilty to an arson offense, which list must be based upon specified reports that the clerks of trial courts must transmit to the State Fire Marshal.

CONTENT AND OPERATION

Prohibited appointments

The bill prohibits a fire department operated by a municipal corporation, township, township fire district, joint fire district, or private fire company ("firefighting agency") from appointing a person to serve as a paid or volunteer "firefighter" if that person (1) previously has served as a firefighter and (2) has been convicted of or pleaded guilty to an "arson offense." For purposes of this prohibition, an arson offense includes *aggravated arson* and *arson* as proscribed

by the Criminal Code (see **COMMENT 1 and 2**), a municipal ordinance that is substantively comparable to *arson* under the Criminal Code, or another state's statute that is substantively comparable to aggravated arson or arson under the Criminal Code. Firefighting agencies will be able to determine whether a prospective appointee is a former firefighter who has been convicted of or pleaded guilty to an arson offense by contacting the State Fire Marshal, who is required to make a specified list of those types of firefighters available to firefighting agencies (see "*Clerk of the trial court and State Fire Marshal follow-up responsibilities*," below). (Secs. 3737.67 and 3737.68(A) and (B).)

Trial court-related provisions

Guilty pleas

Required initial determination and advisement. The bill requires each Ohio trial court, before accepting a guilty plea to an arson offense, to determine whether the defendant has served as a firefighter. If it determines that the defendant has so served, the court must address the defendant personally and provide the defendant with a specified "advisement" about the consequence of the guilty plea, that must be entered in the record of the court. Essentially, the defendant is told that a conviction for an arson offense resulting from the guilty plea will result in the defendant's no longer being eligible to be appointed to serve as a firefighter. If the defendant requests the court to allow the defendant additional time to consider the appropriateness of the guilty plea in light of the advisement, the court must allow that time. (Sec. 3737.69(A)(1).)

Required secondary determination. If a defendant is determined to have previously served as a firefighter, the court cannot accept the defendant's guilty plea unless (1) it complies with the Criminal Rules' procedures relative to the acceptance of guilty pleas (see **COMMENT 3**) and (2) it further determines that the defendant voluntarily and intelligently entered the guilty plea after being given the previously described advisement (sec. 3737.69(A)(1)).

Post-guilty plea duties. After accepting a guilty plea to an arson offense made by a previous firefighter-defendant, the court must provide to its clerk all of the following information: a written notice of and the date of the guilty plea, the defendant's name and address, the name and address of the firefighting agency that the defendant currently serves (if any), the arson offense's nature, and certified copies of the court's entries in the action (sec. 3737.69(A)(2)).

Convictions after trial

If a defendant does not plead guilty to an arson offense but is convicted of an arson offense after trial, the bill requires the trial judge to determine whether

the defendant has served as a firefighter. If the judge determines that the defendant has so served or if the defendant states on the record that the defendant has so served, the judge must provide to the clerk of the court similar information to that described under "Post-guilty plea duties," above. (Sec. 3737.69(B).)

Final disposition notices

If a defendant who has served as a firefighter and who has been convicted of an arson offense appeals the conviction and the "final appeal" is concluded, if the expiration of the time period within which such a defendant may appeal the conviction expires without an appeal being taken, or if an arson offense action otherwise is finally disposed of, the bill requires the trial judge to provide the clerk of the court with a written "final disposition of the action" notice that includes a notice of whichever of the following applies (sec. 3737.69(C)):

- The final conviction of the defendant of an arson offense;
- The defendant's acquittal of the arson offense;
- The defendant's conviction of an offense other than an arson offense;
- The dismissal of the arson offense charge against the defendant.

Clerk of the trial court and State Fire Marshal follow-up responsibilities

Upon receiving information as described under "Post-guilty plea duties," "Convictions after trial," and "Final disposition notices," above, the clerk of a trial court must transmit a report that includes the information and any associated items to the State Fire Marshal and to the firefighting agency that the defendant currently serves (if any). Based on those reports and from any other information that the State Fire Marshal obtains under the Fire Safety Law, the State Fire Marshal must maintain a list of persons who have served as firefighters and who have been convicted of or pleaded guilty to an arson offense. That list is the list that the State Fire Marshal must make available under the bill to firefighting agencies so that they may comply with the bill's "Prohibited appointments" provisions. (Secs. 3737.68(B) and 3737.69(D).)

COMMENT

1. Section 2909.02 of the Revised Code creates the offense of *aggravated arson*. It is committed if a person, by means of fire or explosion, knowingly (a) creates a substantial risk of serious physical harm to any person other than the offender, (b) causes physical harm to any occupied structure, or (c) creates,

through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure. If committed in the manner described in (a) or (c), it is a felony of the first degree. If committed in the manner described in (b), it is a felony of the second degree.

2. Section 2909.03 of the Revised Code creates the offense of *arson*. It is committed if a person by means of fire or explosion, knowingly (a) causes, or creates a substantial risk of, physical harm to any property of another without the other person's consent, (b) causes, or creates a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud, (c) causes, or creates a substantial risk of, physical harm to the Statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes, (d) causes, or creates a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with purpose to defraud, (e) causes, or creates a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision, or (f) with purpose to defraud, causes, or creates a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision. If committed in the manner described in (a), arson is a misdemeanor of the first degree if the value of the property or the amount of the physical harm involved is less than \$500 and is a felony of the fourth degree if that value is \$500 or more. If committed in the manner described in (b), (c), (e), or (f), arson is a felony of the fourth degree. If committed in the manner described in (d), arson is a felony of the third degree.

3. (a) Under Criminal Rule 11, a defendant may plead not guilty, not guilty by reason of insanity, guilty, or, with the consent of the court, no contest. A guilty plea is a complete admission of the defendant's guilt to the relevant offense charged. If a guilty plea is accepted (see below), the court generally must proceed with the defendant's sentencing.

(b) In *felony cases*, if the defendant is not represented by counsel, the court cannot accept a guilty plea unless the defendant, after being readvised of the right to be represented by retained counsel or by appointed counsel, waives that right. The court may refuse to accept a guilty plea, and it cannot accept a guilty plea without first addressing the defendant personally and doing all of the following:

(i) determining that the defendant is making the plea voluntarily, with an understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing, (ii) informing the defendant of and determining that the defendant understands the effect of the guilty plea, and that the court, upon acceptance of the plea, may proceed with judgment and sentence, and (iii) informing the defendant and determining that the defendant understands that by the guilty plea the defendant is waiving the rights to jury trial, to confront witnesses against the defendant, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against the defendant. If, in a felony case, a *negotiated plea* of guilty to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based must be stated on the record in open court.

(c) In *misdemeanor cases involving serious offenses*, the court may refuse to accept a guilty plea, and cannot accept a guilty plea without first addressing the defendant personally and informing the defendant of the effect of a guilty plea, no contest plea, and not guilty plea and determining that the defendant is making the guilty plea voluntarily. If the defendant is not represented by counsel, the court cannot accept a guilty plea unless the defendant, after being readvised that the defendant has the right to be represented by retained counsel or by appointed counsel, waives that right. In *misdemeanor cases involving petty offenses*, the court may refuse to accept a guilty plea, and cannot accept the plea without first informing the defendant of the effect of a guilty plea, no contest plea, and not guilty plea.

(d) If the court refuses to accept a guilty plea in any felony or misdemeanor case, the court must enter a plea of not guilty on behalf of the defendant.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-31-99	p. 1196

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