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SECTIONAL ANALYSIS

HB 355: FIRE; FORESTED LAND;CRIMES;FIRE PREVENTION

Ver. J

Section 1. Amends AS 11.46.427(a)(2) by adding references to AS 41.15.060 – 41.15.120 to make it easier for agencies to coordinate enforcement of similar statutes that appear in different Titles of law.

Section 2. Amends AS 41.15.010 to add the word **forested** land to the intent language of this statute. Forested land is already defined in AS 41.15.170 and brings consistency to terminology used in the statutes.

Section 3. Amends AS 41.15.040 by updating terminology by deleting the “division of land” and adding “division of **forestry**”. Clarifies the right of entry to public or privately owned land for the purpose of preventing, suppressing and controlling a wildland fire to include for the purpose of “investigating” and “when responding to a wildland fire or suspected fire or administering the provisions of this chapter.”

Section 4. Adds a new subsection (b) to AS 41.15.040 that clarifies that a person may not interfere with or prohibit access authorized under (a) of this section, which is the right to enter for the purposes stated.

Section 5. Amends AS 41.15.050 Fire Season to allow the commissioner the ability to designate other periods as fire season **at any time** in order to allow open burning only by permit or to prohibit open burning.

Section 6. Amends AS 41.15.060. Permits. To include obtaining a permit **for setting of fires, use of burning devices, and other activities and use of land that increases fire danger**. This would include burning devices such as burn barrels, a common source of urban interface ignitions. This section is also amended to remove the type of offense a violation of this section would be and relies on a new section to establish types of violations.

Section 7. Adds a new subsection to AS 41.15.060 stating that a person may not participate in any activities that increase fire danger without a permit as prescribed by the commissioner in regulation.

Section 8. Amends AS 41.15.70. Disposal of burning materials to read “**may not discard**...burning materials on **forested** land.” Repeals language on the type of violation this offense would be and relies on amendments in Section 13 of this bill that provides a new range of violations. It also removes a reference to the “fire season” as the period of time this section applies and removes a reference to “public or private land”.

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Section 9. Amends AS 41.15.090. Building or leaving fires. To read “...may not start a fire...without first clearing the ground.” The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Sections 10. Amends AS 41.15.090 by adding a new subsection (b) **A person who starts a fire in or near forested land may not leave the fire before totally extinguishing the fire.** This change makes it very clear that leaving a fire unattended will result in consequences.

Section 11. Clarifies AS 41.15.100 Setting fires without consent. Updates language to “**may not set on fire forested land...**” to make this section consistent with terminology and intent. The type of offense for a violation of this section is repealed and relies on a new section to establish types of violations.

Section 12. Amends AS 41.15.110 **Uncontrolled spread of fire; leaving a fire unattended** by repealing the type of offense for a violation of this section and relies on a new section to establish types of violations.

Subsection (b) has verbiage change to **shall**, a positive action as opposed to the deleted current language “**who neglects to.**” New language is added to make it clear that a person **may not leave a fire unattended** and the type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Subsection (c) updates terminology and makes it clear in any criminal action brought under this section that the escape of a fire **may be evidence that the person acted knowingly.** This change helps define mental state.

Section 13. Amends AS 41.15.120 by including the term **investigate** as one of the criteria for when an officer or employee of the United States or the state who is authorized to prevent and suppress fire requests a person to assist with such efforts. It also adds the word **shall** as opposed to “**fails to**” in determining if a person is in violation of the statute. The type of offense for a violation of this section is removed and relies on a new section to establish types of violations.

Section 14. Amends AS 41.15.130 Backfires. Adds the terminology **and burnouts** to allow fire suppression activity as “**directed by an officer or employee of the U.S. or state who is authorized...**” and makes it clear that AS 41.15.045 (Civil immunity) applies to the activities under this section.

Section 15. Repeals and reenacts AS 41.15.140 to establish a range of violations and fines that increase with the seriousness of the offense. This section also links to the criminal statutes to improve the understanding and consistency between enforcement agencies and the courts.

Subsection (a) makes it clear that if AS 41.15.150 applies, a felony charge, the following sections do not apply.

Subsection (a)(1) establishes a class A misdemeanor offense for violations of AS 41.15.010-41.15.130 for persons who knowingly violate this section.

Subsection (a)(2) establishes a fine amount in accordance with AS 12.55

Section 16. Amends AS 41.15.150 to provide specific criteria for criminal burning in the first degree if (a)(1) the person violates AS 41.15.155, and (2) a provision of 41.15.010-41.15.130 or a regulation adopted under AS 41.15.010-41.15.130

Subsection (b) provides for a class B felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Section 17. Amends AS 41.15.150 by adding a new section to provide specific criteria for criminal burning in the second degree if the person (a)(1) knowingly sets a fire, (2) with criminal negligence, the person (a) permits the fire to spread beyond the person's control or (b)fails to prevent the fire from spreading to forested land or other flammable material and (3) as a result, the fire burns forested land or other flammable material located or growing on land that is not owned, possessed or controlled by the person

Subsection (b) provides for a class C felony if in violation of subsection (a) of this section and is punishable as provided in AS 12.55 the Sentencing and Probation Chapter of Title 12.

Subsection (d) provides for an upgrading violation to a class B felony if the initial setting of the fire is in violation of AS 41.15.010 – 41.15.130 or a regulation adopted under AS 41.15.010 – 41.15.130.

Section 18. Amends AS 41.150.160. Double damages in civil actions to clarify applicable statutes for this provision.

Section 19. Amends AS 41.15.170 to add paragraph (5) "knowingly" which has the meaning in AS 11.81.900 and adds paragraph (6) "recklessly" which has the meaning given in AS 11.81.900.

Section 20. Amends AS 41.15.950 to add (b)(4) a new subsection to provide clear authority to issue a citation to a person who violates a provision of AS 41.15.010 – 41.15.170 or a regulation adopted under this chapter.

Section 21. Adds a new section AS 41.15.960 directing the supreme court to establish a bail schedule for violations of statute specified in this bill.

Section 22. Repeals AS 41.15.080 which was a section on equipment and notice requirement for operators of a conveyance on or above forested land to be equipped with a receptacle for the disposal of burning material, shall post or display a copy of AS 41.15.050 - .080 and 41.15.140 in a conspicuous place. Additionally, an operator of a milling, logging or commercial operation shall also post and display a copy of the statute per the previous notation and if found in violation of this section, is guilty of a misdemeanor.

Section 23. Amends the uncodified law of the State of Alaska by adding a new section to read:
TRANSITION: REGULATIONS. The Department of Natural Resources may adopt regulation necessary to implement the changes made by this Act. The regulation take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

Section 24. Provides courts 120 days to establish bail schedule required by Section 21.

Section 25. Sections 23 and 24 take effect immediately under AS 01.10.070 (c)

Section 26. Except as provided in Section 25, this Act takes effect July 1st, 2018.