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Radford  
4/17/18

**SENATE CS FOR CS FOR HOUSE BILL NO. 355(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GUTTENBERG, Tuck

**A BILL**

**FOR AN ACT ENTITLED**

"An Act relating to the crime of criminally negligent burning; relating to protection of and fire management on forested land; relating to prohibited acts and penalties for prohibited acts on forested land; requiring the Alaska Supreme Court to establish a bail schedule; and providing for an effective date."

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

\* **Section 1.** AS 11.46.427(a) is amended to read:

(a) A person commits the crime of criminally negligent burning in the first degree if the person

(1) violates AS 11.46.430; and

(2) within the preceding 10 years, has been convicted on two separate occasions of violating

(A) AS 11.46.400 - 11.46.430;

(B) **misdemeanor crimes under AS 41.15.060 - 41.15.120;** or

(C) [AS 41.15.150 OR] a law or ordinance of this or another

jurisdiction with elements similar to the [THOSE] offenses in (A) or (B) of this paragraph.

\* **Sec. 2.** AS 41.15.010 is amended to read:

**Sec. 41.15.010. Intent.** It is the intent of AS 41.15.010 - 41.15.170 to provide protection from wildland fire and other destructive agents, commensurate with the values at risk, on forested land that is owned privately, by the state, or by a municipality.

\* **Sec. 3.** AS 41.15.040 is amended to read:

**Sec. 41.15.040. Right of entry to control and suppress fires.** Upon approval by the commissioner or an authorized agent, an employee of the division of forestry [LANDS], or of any organization authorized to prevent, control, or suppress a fire or a destructive agent, and others assisting in the control or suppression of a fire upon request of an officer or employee of the United States or the state may, when responding to a wildland fire or suspected wildland fire or administering the provisions of this chapter, [AT ANY TIME] enter upon any land, whether publicly or privately owned, for the purpose of preventing, investigating, suppressing, or controlling a wildland fire or a destructive agent.

\* **Sec. 4.** AS 41.15.040 is amended by adding a new subsection to read:

(b) A person may not interfere with or prohibit the access authorized under (a) of this section.

\* **Sec. 5.** AS 41.15.050 is amended to read:

**Sec. 41.15.050. Fire season.** The period from April 1 to August 31, inclusive, of each year is designated the fire season. [THE COMMISSIONER MAY DESIGNATE OTHER PERIODS AS FIRE SEASON.] The commissioner may, at any time, proclaim an additional period for all or any portion of the state when weather or other conditions require action for the protection of forested land. The commissioner may also, at any time [DURING THE FIRE SEASON], prohibit, or allow only by permit, the setting of fires, smoking, entry, or other use on the land, when, in the judgment of the commissioner, the activities would unduly increase the fire danger.

\* **Sec. 6.** AS 41.15.060 is amended to read:

1           **Sec. 41.15.060. Permits.** The commissioner shall, by regulation, prescribe the  
2 conditions of and the manner for obtaining a permit **for the setting of fires, use of**  
3 **burning devices, and other activities and uses of land that increase fire danger** [.  
4 FAILURE TO OBTAIN THE REQUIRED PERMIT, OR VIOLATION OF A  
5 CONDITION OF THE PERMIT IS A MISDEMEANOR].

6 \* **Sec. 7.** AS 41.15.060 is amended by adding a new subsection to read:

7           (b) A person may not set fires, use burning devices, or conduct other activities  
8 or use land that increases fire danger without a permit as prescribed by the  
9 commissioner in regulation.

10 \* **Sec. 8.** AS 41.15.070 is amended to read:

11           **Sec. 41.15.070. Disposal of burning materials.** **During the fire season, a**  
12 **burn closure, or restriction established under AS 41.15.050, a** [A] person **may not**  
13 **discard any** [WHO, DURING THE FIRE SEASON, THROWS AWAY] lighted  
14 tobacco, cigar, cigarette, match, firecracker, or other burning material on forested land  
15 [, WHETHER PUBLIC OR PRIVATE, IS GUILTY OF A MISDEMEANOR].

16 \* **Sec. 9.** AS 41.15.090 is amended to read:

17           **Sec. 41.15.090. Building or leaving fires.** A person **may not start** [WHO  
18 BUILDS] a fire in or near **forested land** [TIMBER, BRUSH, GRASS, OR OTHER  
19 INFLAMMABLE MATERIAL] without first clearing the ground immediately around  
20 it free from materials that will carry fire [OR WHO LEAVES THE FIRE BEFORE  
21 TOTALLY EXTINGUISHING IT, IS GUILTY OF A MISDEMEANOR].

22 \* **Sec. 10.** AS 41.15.090 is amended by adding a new subsection to read:

23           (b) A person who starts a fire in or near forested land may not leave the fire  
24 before totally extinguishing the fire.

25 \* **Sec. 11.** AS 41.15.100 is amended to read:

26           **Sec. 41.15.100. Setting fires without consent.** A person **may not set** [WHO  
27 SETS] on fire **forested land** [TIMBER, BRUSH, GRASS,] or other inflammable  
28 material located or growing on land that is not owned, possessed, or controlled by the  
29 person, without the consent of the owner or lawful occupant of the land [, IS GUILTY  
30 OF A MISDEMEANOR].

31 \* **Sec. 12.** AS 41.15.110 is amended to read:

1           **Sec. 41.15.110. Uncontrolled spread of fire; leaving fire unattended.** (a) A  
2 person who knows of a fire or sets a fire on forested land owned, possessed, or  
3 controlled by the person, shall exercise due care to prevent the uncontrolled spread of  
4 the fire. [A PERSON FAILING TO EXERCISE DUE CARE WHICH RESULTS IN  
5 SPREAD OF THE FIRE AND DAMAGE TO PROPERTY OF ANOTHER IS  
6 GUILTY OF A MISDEMEANOR.]

7           (b) A person shall [WHO NEGLECTS TO] make every effort possible to  
8 extinguish a fire the person knowingly sets on forested land **and may not leave a fire**  
9 **unattended** [OR WHO LEAVES SUCH A FIRE UNATTENDED IS GUILTY OF A  
10 MISDEMEANOR].

11           (c) In a criminal action brought under this section, the escape of the fire **may**  
12 **be considered by a court as** [IS PRESUMPTIVE] evidence **that** [OF NEGLIGENCE  
13 BY] the person responsible for starting the fire **acted knowingly** [AND UNLESS  
14 REBUTTED IS SUFFICIENT TO SUSTAIN A CONVICTION].

15 \* **Sec. 13.** AS 41.15.120 is amended to read:

16           **Sec. 41.15.120. Failure to assist in preventing or suppressing fires.** If an  
17 officer or employee of the United States or the state who is authorized to prevent,  
18 **investigate,** or suppress fires requests a person to assist in the prevention or  
19 suppression of a fire and informs the person of the officer or employee's official status,  
20 [AND] the person shall [FAILS TO] assist the officer or employee [IN THE  
21 PERFORMANCE OF DUTIES, THE PERSON IS GUILTY OF A  
22 MISDEMEANOR].

23 \* **Sec. 14.** AS 41.15.130 is amended to read:

24           **Sec. 41.15.130. Backfires and burnouts excluded. AS 41.15.010 - 41.15.040**  
25 **and 41.15.050 - 41.15.170** [AS 41.15.010 - 41.15.170] do not apply to the setting of  
26 **backfires, burnouts, and other burning or clearing of land** [A BACKFIRE] under  
27 the direction of an officer or employee of the United States or the state who is  
28 authorized to prevent or suppress fires.

29 \* **Sec. 15.** AS 41.15.140 is repealed and reenacted to read:

30           **Sec. 41.15.140. Penalty.** Except as provided in AS 41.15.150, a person who

31           (1) knowingly violates a provision of AS 41.15.040 - 41.15.130 is

guilty of a class A misdemeanor punishable as provided in AS 12.55;

(2) without any culpable mental state, violates a provision of AS 41.15.040 - 41.15.130 or a regulation adopted under AS 41.15.040 - 41.15.130 is guilty of a violation and upon conviction is punishable by a fine under AS 12.55.

\* **Sec. 16.** AS 41.15.150 is repealed and reenacted to read:

**Sec. 41.15.150. Criminal burning of forested land in the first degree.** (a) A person commits the crime of criminal burning of forested land in the first degree if

(1) the person violates AS 41.15.155; and

(2) the person's actions or conduct violate a provision of AS 41.15.010 - 41.15.130 or a regulation adopted under AS 41.15.010 - 41.15.130.

(b) Criminal burning of forested land in the first degree is a class B felony punishable as provided in AS 12.55.

\* **Sec. 17.** AS 41.15 is amended by adding a new section to read:

**Sec. 41.15.155. Criminal burning of forested land in the second degree.** (a) A person commits the crime of criminal burning of forested land in the second degree if

(1) the person 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.

(b) The crime of criminal burning of forested land in the second degree is a class C felony punishable as provided in AS 12.55.

\* **Sec. 18.** AS 41.15.160 is amended to read:

**Sec. 41.15.160. Double damages in civil actions.** In addition to the criminal punishment provided for by AS 11.46.400 - 11.46.450, AS 41.15.140, and 41.15.150 [AS 41.15.010 - 41.15.170], the United States, the state, a municipality, or any person may recover in a civil action double the amount of damages sustained as a consequence of a violation of AS 11.46.400 - 11.46.450, AS 41.15.010 - 41.15.150

[AS 41.15.010 - 41.15.170]. In a civil action brought under AS 41.15.010 - 41.15.170 or any other law relating to the subject matter of AS 41.15.010 - 41.15.170, the escape of a fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain the recovery.

\* **Sec. 19.** AS 41.15.170 is amended by adding new paragraphs to read:

(5) "criminal negligence" has the meaning given in AS 11.81.900;

(6) "knowingly" has the meaning given in AS 11.81.900.

\* **Sec. 20.** AS 41.15.950(b) is amended to read:

(b) A person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

(1) execute a warrant or other process issued by an officer or court of competent jurisdiction;

(2) administer or take an oath, affirmation, or affidavit; [AND]

(3) arrest a person who violates a provision of this chapter or a regulation adopted under this chapter; and

(4) 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.

\* **Sec. 21.** AS 41.15 is amended by adding a new section to read:

**Sec. 41.15.960. Bail schedules.** The supreme court shall establish by rule or order a schedule of bail amounts for offenses under this chapter or under regulations adopted under this chapter that allow the disposition of a citation without a court appearance. The bail amount may not exceed the maximum fine authorized by law for that offense.

\* **Sec. 22.** AS 41.15.080 is repealed.

\* **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Natural Resources may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

\* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2       TRANSITION: SCHEDULE OF BAIL AMOUNTS. Notwithstanding AS 41.15.960,  
3 enacted by sec. 21 of this Act, the supreme court shall establish the bail schedule required  
4 under sec. 21 of this Act within 120 days after the effective date of sec. 21 of this Act.

5       \* **Sec. 25.** Sections 23 and 24 of this Act take effect immediately under AS 01.10.070(c).

6       \* **Sec. 26.** Except as provided in sec. 25 of this Act, this Act takes effect July 1, 2018.