

HOUSE BILL NO. 355

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE GUTTENBERG

Introduced: 2/16/18

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of criminally negligent burning; relating to protection of
2 and fire management on forested land; relating to prohibited acts and penalties for
3 prohibited acts on forested land; and providing for an effective date."

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

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

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

8 (1) violates AS 11.46.430; and

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

11 (A) AS 11.46.400 - 11.46.430;

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

13 (C) [AS 41.15.150 OR] a law or ordinance of this or another
14 jurisdiction with elements similar to the [THOSE] offenses in (A) or (B) of

1 this paragraph.

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

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

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

8 **Sec. 41.15.040. Right of entry to control and suppress fires.** Upon approval
9 by the commissioner or an authorized agent, an employee of the division of forestry
10 [LANDS], or of any organization authorized to prevent, control, or suppress a fire or a
11 destructive agent, and others assisting in the control or suppression of a fire upon
12 request of an officer or employee of the United States or the state may at any time
13 enter upon any land, whether publicly or privately owned, for the purpose of
14 preventing, investigating, suppressing, or controlling a wildland fire or a destructive
15 agent.

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

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

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

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

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

30 **Sec. 41.15.060. Permits.** The commissioner shall, by regulation, prescribe the
31 conditions of and the manner for obtaining a permit for the setting of fires, use of

1 **burning devices, and other activities and uses of land that increase fire danger** [.]
 2 FAILURE TO OBTAIN THE REQUIRED PERMIT, OR VIOLATION OF A
 3 CONDITION OF THE PERMIT IS A MISDEMEANOR].

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

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

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

9 **Sec. 41.15.070. Disposal of burning materials.** A person **may not discard**
 10 **any** [WHO, DURING THE FIRE SEASON, THROWS AWAY] lighted tobacco,
 11 cigar, cigarette, match, firecracker, or other burning material on forested land [,
 12 WHETHER PUBLIC OR PRIVATE, IS GUILTY OF A MISDEMEANOR].

13 * **Sec. 9.** AS 41.15.090 is amended to read:

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

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

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

22 * **Sec. 11.** AS 41.15.100 is amended to read:

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

28 * **Sec. 12.** AS 41.15.110 is amended to read:

29 **Sec. 41.15.110. Uncontrolled spread of fire; leaving fire unattended.** (a) A
 30 person who knows of a fire or sets a fire on forested land owned, possessed, or
 31 controlled by the person, shall exercise due care to prevent the uncontrolled spread of

1 the fire. [A PERSON FAILING TO EXERCISE DUE CARE WHICH RESULTS IN
2 SPREAD OF THE FIRE AND DAMAGE TO PROPERTY OF ANOTHER IS
3 GUILTY OF A MISDEMEANOR.]

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

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

12 * **Sec. 13.** AS 41.15.120 is amended to read:

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

20 * **Sec. 14.** AS 41.15.130 is amended to read:

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

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

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

28 (1) knowingly violates a provision of AS 41.15.040 - 41.15.130 is
29 guilty of a class A misdemeanor punishable as provided in AS 12.55;

30 (2) without any culpable mental state, violates a provision of
31 AS 41.15.040 - 41.15.130 or a regulation adopted under AS 41.15.040 - 41.15.130 is

1 guilty of a violation and upon conviction is punishable by a fine of not more than
2 \$5,000.

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

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

6 (1) the person violates AS 41.15.155; and

7 (2) the person's actions or conduct violate a provision of AS 41.15.010
8 - 41.15.130 or a regulation adopted under AS 41.15.010 - 41.15.130.

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

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

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

15 (1) the person knowingly sets a fire;

16 (2) with criminal negligence, the person

17 (A) permits the fire to spread beyond the person's control; or

18 (B) fails to prevent the fire from spreading to forested land or
19 other flammable material; and

20 (3) as a result, the fire burns forested land or other flammable material
21 located or growing on land that is not owned, possessed, or controlled by the person.

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

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

25 **Sec. 41.15.160. Double damages in civil actions.** In addition to the criminal
26 punishment provided for by AS 11.46.400 - 11.46.450, AS 41.15.140, and 41.15.150
27 [AS 41.15.010 - 41.15.170], the United States, the state, a municipality, or any person
28 may recover in a civil action double the amount of damages sustained as a
29 consequence of a violation of AS 11.46.400 - 11.46.450, AS 41.15.010 - 41.15.150
30 [AS 41.15.010 - 41.15.170]. In a civil action brought under AS 41.15.010 - 41.15.170
31 or any other law relating to the subject matter of AS 41.15.010 - 41.15.170, the escape

1 of a fire is presumptive evidence of negligence by the person responsible for starting
 2 the fire and unless rebutted is sufficient to sustain the recovery.

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

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

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

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

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

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

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

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

14 (4) issue a citation to a person who violates a provision of
 15 AS 41.15.010 - 41.15.170 or a regulation adopted under this chapter.

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

17 **Sec. 41.15.960. Form and issuance of citation; bail schedules.** (a) When a
 18 peace officer stops or contacts a person concerning a violation of this chapter or of a
 19 regulation adopted under this chapter that is a misdemeanor or a violation, the peace
 20 officer may issue a citation to the person as provided in AS 12.25.175 - 12.25.230.

21 (b) The supreme court shall specify by rule or order those misdemeanors and
 22 violations that are appropriate for disposition without court appearance and shall
 23 establish a schedule of bail amounts. The maximum bail amount for an offense may
 24 not exceed the maximum fine specified by law for that offense. If the misdemeanor or
 25 violation for which the citation is issued may be disposed of without court appearance,
 26 the issuing peace officer shall write on the citation the amount of bail applicable to the
 27 violation.

28 (c) If a person cited for an offense for which a bail amount has been
 29 established under (b) of this section does not contest the citation, the person may, on
 30 or before the 30th day after the date of the citation, mail or personally deliver to the
 31 clerk of the court in which the citation is filed by the peace officer

1 (1) the amount of bail indicated on the citation for that offense; and

2 (2) a copy of the citation indicating that the right to an appearance is
3 waived, a plea of no contest is entered, and the bail is forfeited.

4 (d) When bail has been forfeited under (c) of this section, a judgment of
5 conviction shall be entered. Forfeiture under this section of bail and all items seized is
6 complete satisfaction for the misdemeanor or violation. The clerk of the court shall
7 provide the offender with a receipt stating that fact if requested.

8 (e) A person cited who fails to pay the bail amount established under (b) of
9 this section or fails to appear in court as required is guilty of failure to obey a citation
10 under AS 12.25.230.

11 (f) Notwithstanding other provisions of law, if a person cited for a
12 misdemeanor for which a bail amount has been established in (b) of this section
13 appears in court and is found guilty, the penalty that is imposed for the offense may
14 not exceed the bail amount for that offense established in (b) of this section.

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

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

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

22 * **Sec. 24.** Section 23 of this Act takes effect immediately under AS 01.10.070(c).

23 * **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect July 1, 2018.