

CLHB1188.002

5.10.10

FIRST REPORT OF FIRST CONFERENCE COMMITTEE  
ON HB10-1188

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THIS REPORT AMENDS THE  
REENGROSSED BILL  
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To the President of the Senate and the  
Speaker of the House of Representatives:

Your first conference committee appointed on HB10-1188, concerning clarification of the scope of the existing right of navigation of guides employed by river outfitters, has met and reports that it has agreed upon the following:

That the Senate recede from its amendments made to the bill, as the amendments appear in the rerevised bill, and that the following amendments be substituted therefor:

Amend reengrossed bill, page 2, strike lines 16 and 17.

Page 3, strike lines 1 through 15 and substitute:

"(a) RECOGNIZES THE NEED TO CODIFY AND CLARIFY THE EXISTING LAW CONCERNING THE RIGHT TO FLOAT;

(b) DECLARES THAT CLARIFYING THIS RIGHT TO FLOAT WILL SAFEGUARD THE HEALTH, SAFETY, WELFARE, AND FREEDOM FROM INJURY OR DANGER OF RIVER GUIDES AND THEIR PASSENGERS; AND

(c) AFFIRMS THE IMPORTANCE OF PROTECTING PRIVATE PROPERTY RIGHTS."

Page 4, strike line 4 and substitute:

**"33-32-106.5. Right to float - liability."**

Page 4, strike lines 7 through 11 and substitute:

"(a) "RIVER GUIDE" MEANS:

(I) A RIVER OUTFITTER AND THE RIVER OUTFITTER'S EMPLOYEES, AGENTS, AND PASSENGERS ON THE RIVER OUTFITTER'S VESSEL; AND

(II) ANY OTHER PERSON NOT OTHERWISE SUBJECT TO THIS ARTICLE WHO IS FLOATING A VESSEL ON A WATERWAY AND ANY PASSENGERS OF THAT PERSON."

Reletter succeeding paragraph accordingly.

Page 4, line 13, after "WHICH" insert "ONE OR MORE" and strike "DURING 2008 OR" and substitute "IN ANY YEAR FROM 2000 THROUGH".

Page 4, line 14, strike "**Navigation right.**" and substitute "**Right to float.**".

Page 4, line 15, after the comma insert "NOTWITHSTANDING SECTION 41-1-107, C.R.S.,".

Page 4, line 19, strike "IS CAUSED".

Page 4, strike line 20.

Page 4, line 21, strike "AND SUCH CONTACT" and strike "NAVIGATION" and substitute "PASSAGE".

Page 4, strike lines 26 and 27.

Page 5, strike lines 1 through 3 and substitute:

"(c) THE RIVER GUIDE TOUCHES THE BED OR BANKS OF THE WATERWAY TO PUSH THE VESSEL OFF A PROTRUDING OBSTACLE, SUCH AS A SUBMERGED BRANCH OR ROCK, IN ORDER TO CONTINUE UNINTERRUPTED FLOATING THROUGH THE PRIVATE PROPERTY."

Page 5, line 5, strike "PROPERTY," and substitute "PROPERTY OR".

Page 5, line 6, strike "CONTACT, OR PORTAGES" and substitute "CONTACT".

Page 5, line 10, after "C.R.S." add "FOR THE PURPOSES OF THIS SECTION, "WILLFULLY OR DELIBERATELY CAUSED" DOES NOT INCLUDE THE CONSTRUCTION, INSTALLATION, OR MAINTENANCE IN THE LEAST RESTRICTIVE MANNER NECESSARY OF ANY OF THE FOLLOWING STRUCTURES: ANY WATER DIVERSION, STORAGE, CONVEYANCE, OR MEASURING DEVICE; ANY FENCE THAT IS REASONABLY NECESSARY FOR THE CONTROL OF LIVESTOCK; ANY BRIDGE IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION OR LAWFULLY CONSTRUCTED THEREAFTER; OR ANY FISH HABITAT STRUCTURE; EXCEPT THAT ANY OF THE FOREGOING ACTIONS THAT OBSTRUCT CONTINUED PASSAGE DOWNSTREAM ON A WATERWAY JUSTIFY INCIDENTAL CONTACT TO AVOID THE OBSTRUCTION."

Page 5, line 11, after "**liability.**" insert "(a)".

Page 5, line 12, strike "REGULATED".

Page 5, after line 12 insert:

"(b) EXCEPT AS AUTHORIZED PURSUANT TO SUBSECTION (2) OF THIS SECTION, ANY CONTACT WITH THE BED OR BANKS OF A WATERWAY BY A RIVER GUIDE WHILE PASSING THROUGH PRIVATE PROPERTY IS ACTIONABLE AS A CIVIL TRESPASS, INCLUDING WALKING, WADING, DROPPING OR DRAGGING ANY TYPE OF ANCHOR, INTENTIONALLY BROACHING A VESSEL AGAINST A BANK OR OBSTACLE TO HOLD THE VESSEL IN A PARTICULAR LOCATION, OR USING THE BED OR BANKS FOR FISHING, RESTING, EATING, OR OTHER PERSONAL OR RECREATIONAL ACTIVITIES."

Page 5, strike lines 17 and 18 and substitute:

"(b) AFFECT THE RIGHT TO FLOAT ON ANY SEGMENT OF A RIVER IN COLORADO OTHER THAN A WATERWAY;"

Page 5, line 20, strike "OR".

Page 5, line 21, strike "OWNERSHIP OF" and substitute "TITLE TO".

Page 5, line 22, strike "STATE." and substitute "STATE; OR

(e) AFFECT ANY LIMITATION ON A LANDOWNER'S LIABILITY

CREATED BY ARTICLE 41 OF TITLE 33, C.R.S."

Page 6, line 10, strike "REGULATED".

Page 6, strike line 11 and substitute "SECTION 33-32-106.5 (1), C.R.S."

Page 6, after line 15 insert:

**"SECTION 5. Severability.** If a court finds, in a final, nonappealable decision, that any provision of this act creates a takings, rather than order the payment of just compensation the court shall, pursuant to section 2-4-204, Colorado Revised Statutes, sever that provision and hold it to be unconstitutional."

Renumber succeeding sections accordingly.

Page 6, line 16, strike "regulated".