

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0100.03 Thomas Morris

HOUSE BILL 10-1188

HOUSE SPONSORSHIP

Curry, Fischer, Labuda, Massey, Scanlan

SENATE SPONSORSHIP

Hodge, Gibbs, Heath, Tochtrop

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CLARIFICATION OF THE SCOPE OF THE EXISTING RIGHT
102 OF NAVIGATION OF GUIDES EMPLOYED BY RIVER OUTFITTERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law is unclear regarding the scope of the existing right of navigation. **Section 1** of the bill recognizes that the state's adoption of the common law of England established the right of navigation. **Section 2:**
! Clarifies that a guide employed by a licensed river outfitter and the guide's passengers may float on waterways that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

have historically been used for commercial float trips without committing civil or criminal trespass if they gain access to the waterway from public land or from private land with consent and make only incidental contact with the beds and banks of the waterway while floating and portaging;

- ! Limits a landowner's liability to such persons to damages willfully or deliberately caused by the landowner unless the person is an invitee or licensee of the landowner;
- ! Specifies that such a person who damages private property is liable for the damage; and
- ! Specifies that nothing in the law regulating river outfitters affects water rights.

Section 3 makes a conforming and clarifying amendment to the criminal trespass statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 33-32-101, Colorado Revised Statutes, is amended
3 to read:

4 **33-32-101. Legislative declaration.** (1) The general assembly
5 declares that it is the policy of this state to promote and encourage
6 residents and nonresidents alike to participate in the enjoyment and use
7 of the rivers of this state and, to that end, in the exercise of the police
8 powers of this state for the purpose of safeguarding the health, safety,
9 welfare, and freedom from injury or danger of such residents and
10 nonresidents, to license and regulate those persons who provide
11 river-running services in the nature of equipment or personal services to
12 such residents and nonresidents for the purpose of floating on rivers in
13 this state unless the provider of such river-running services is providing
14 such river-running services exclusively for family or friends.

15 (2) THE GENERAL ASSEMBLY:

16 (a) RECOGNIZES THAT ITS ADOPTION OF THE COMMON LAW OF
17 ENGLAND, WHICH PREDATED COLORADO'S ADMISSION TO THE UNITED

1 STATES AND IS CURRENTLY CODIFIED IN SECTION 2-4-211, C.R.S.,
2 INCLUDED THE RIGHT OF NAVIGATION, AS RECOGNIZED BY THE UNITED
3 STATES SUPREME COURT IN THE CASE OF *SHIVELY V. BOWLBY*, 152 U.S. 1
4 (1894);

5 (b) FINDS THAT, PURSUANT TO SECTION 2-4-211, C.R.S., THIS
6 COMMON-LAW RIGHT OF NAVIGATION SHALL BE CONSIDERED AS OF FULL
7 FORCE UNTIL REPEALED BY LEGISLATIVE AUTHORITY;

8 (c) DETERMINES THAT NO SUCH REPEAL HAS OCCURRED WITH
9 REGARD TO THE ISSUES ADDRESSED BY THIS ARTICLE, AS DEMONSTRATED
10 IN PART BY THE GENERAL ASSEMBLY'S ENACTMENT OF THIS ARTICLE TO
11 AUTHORIZE RIVER GUIDES TO NAVIGATE, WITHIN SPECIFIED PARAMETERS,
12 ON THE STATE'S RIVERS; AND

13 (d) DECLARES THAT CLARIFYING THIS RIGHT OF NAVIGATION WILL
14 ENABLE RIVER OUTFITTERS TO PROVIDE RIVER-RUNNING SERVICES IN A
15 MANNER THAT SAFEGUARDS THE HEALTH, SAFETY, WELFARE, AND
16 FREEDOM FROM INJURY OR DANGER OF RIVER OUTFITTERS AND THEIR
17 PASSENGERS.

18 (3) It is not the intent of the general assembly to interfere in any
19 way with private landowner rights along rivers or to prevent the owners
20 of whitewater equipment from using said equipment to accommodate
21 friends when no consideration is involved; nor is it the intent of the
22 general assembly to interfere in any way with the general public's ability
23 to enjoy the recreational value of state rivers when the services of river
24 outfitters are not utilized or to interfere with the right of the United States
25 to manage public lands and waters under its control.

26 (4) The general assembly recognizes that river outfitters, as an
27 established business on rivers flowing within and without this state, make

1 a significant contribution to the economy of this state. ~~and that the~~
2 ~~number of residents and nonresidents who are participating in~~
3 ~~river-running is steadily increasing.~~

4 **SECTION 2.** Article 32 of title 33, Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW SECTION to read:

6 **33-32-107.5. Right of navigation - liability - water rights.**

7 (1) **Definitions.** FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
8 OTHERWISE REQUIRES:

9 (a) "RIVER GUIDE" MEANS A PERSON WHO IS QUALIFIED PURSUANT
10 TO SECTION 33-32-105.5 AND WHO CONDUCTS A REGULATED TRIP ON A
11 WATERWAY AND THE PASSENGERS OF THAT PERSON.

12 (b) "WATERWAY" MEANS A RIVER IN COLORADO ON WHICH
13 REGULATED TRIPS HAVE BEEN RUN PRIOR TO THE EFFECTIVE DATE OF THIS
14 SECTION.

15 (2) **Navigation right.** IF A RIVER GUIDE GAINS ACCESS TO A
16 WATERWAY FROM PUBLIC LAND OR FROM PRIVATE LAND WITH CONSENT,
17 THE RIVER GUIDE DOES NOT COMMIT CIVIL OR CRIMINAL TRESPASS WHEN:

18 (a) THE VESSEL PASSES OVER OR THROUGH PRIVATE PROPERTY;

19 (b) THE RIVER GUIDE MAKES NO MORE THAN INCIDENTAL CONTACT
20 WITH THE BED OR BANKS OF THE WATERWAY IF SUCH CONTACT IS CAUSED
21 BY CONDITIONS SUCH AS LOW WATER OR AN OBSTACLE SUCH AS A ROCK
22 AND SUCH CONTACT IS INCIDENTAL TO CONTINUED NAVIGATION AND IS
23 NOT FOR RECREATIONAL OR PERSONAL PURPOSES SUCH AS FISHING,
24 RELAXING, OR EATING; OR

25 (c) THE RIVER GUIDE MAKES CONTACT WITH THE BED OR BANKS OF
26 THE WATERWAY IN ORDER TO PORTAGE AROUND A HAZARD OR
27 OBSTRUCTION IF THE PORTAGE MAKES THE MINIMUM POSSIBLE USE OF THE

1 BED OR BANKS THAT IS NECESSARY TO SAFELY AVOID THE HAZARD OR
2 OBSTRUCTION.

3 (3) **Landowner liability.** A LANDOWNER'S LIABILITY TO A RIVER
4 GUIDE WHO PASSES OVER PRIVATE PROPERTY, MAKES INCIDENTAL
5 CONTACT, OR PORTAGES AS PERMITTED IN SUBSECTION (2) OF THIS
6 SECTION IS LIMITED TO DAMAGES WILLFULLY OR DELIBERATELY CAUSED
7 BY THE LANDOWNER UNLESS THE RIVER GUIDE IS AN INVITEE OR LICENSEE
8 OF THE LANDOWNER, AS THOSE TERMS ARE DEFINED IN SECTION 13-21-115
9 (5), C.R.S.

10 (4) **River guide liability.** A RIVER GUIDE WHO DAMAGES PRIVATE
11 PROPERTY WHILE ON A REGULATED TRIP IS LIABLE FOR THE DAMAGE.

12 (5) **Other rights unaffected.** NOTHING IN THIS ARTICLE SHALL BE
13 CONSTRUED TO:

14 (a) CREATE A WATER RIGHT OR AFFECT ANY EXISTING WATER
15 RIGHT IN ANY WAY; OR

16 (b) AFFECT THE RIGHT TO NAVIGATE OF ANYONE OTHER THAN A
17 RIVER GUIDE.

18 **SECTION 3.** 18-4-504.5, Colorado Revised Statutes, is amended
19 to read:

20 **18-4-504.5. Definitions.** As used in sections 18-4-503 and
21 18-4-504, UNLESS THE CONTEXT OTHERWISE REQUIRES:

22 (1) "PERSON" DOES NOT INCLUDE A RIVER GUIDE WHO CONDUCTS
23 A REGULATED TRIP ON A WATERWAY, AS THOSE TERMS ARE DEFINED IN
24 SECTIONS 33-32-102 AND 33-32-107.5 (1), C.R.S.

25 (2) "Premises" means real property, buildings and other
26 improvements ~~thereon~~ ON SUCH REAL PROPERTY, and the stream banks
27 and beds of any nonnavigable fresh water streams flowing through such

1 real property.

2 **SECTION 4. Applicability.** This act shall apply to regulated
3 trips occurring on or after the effective date of this act.

4 **SECTION 5. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.