

CHAPTER 4

COURTS

HOUSE BILL 02S-1001

BY REPRESENTATIVE(S) Rippy, Alexander, Cadman, Crane, Dean, Decker, Fairbank, Fritz, Garcia, Groff, Hoppe, Jahn, Kester, Lee, Mace, Marshall, Ragsdale, Romanoff, Schultheis, Snook, Spence, Spradley, Stafford, Stengel, Tochtrop, Veiga, Webster, White, Williams S., and Coleman;

also SENATOR(S) Taylor, Entz, Epps, Evans, Fitz-Gerald, Hagedorn, Hanna, Hernandez, Isgar, May, Phillips, Thiebaut, and Windels.

AN ACT**CONCERNING RECOMMENDATIONS OF THE WATER AVAILABILITY TASK FORCE RELATING TO MEASURES TO ADDRESS DROUGHT CONDITIONS.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) Farmers, ranchers, industry, and homeowners all depend on water for existence;

(b) Pursuant to a series of agreements, consumers of water in ten states depend upon water runoff from the Rio Grande and the Colorado, South Platte, and Arkansas rivers in Colorado;

(c) There was significantly less snowfall in the 2001-02 winter season than on average, resulting in a reduced level of water available to these consumers;

(d) According to the Colorado water conservation board, as of May 1, 2002, the season's statewide snowpack was only nineteen percent of the state's seasonal average snowpack;

(e) The moisture content of grass is one to four percent of normal and the moisture content of trees is six to ten percent of normal;

(f) Experts have indicated that parts of the state are experiencing the driest

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

conditions in nearly one hundred years;

(g) Low snowpack, significantly reduced moisture content in grass and trees, and other such drought conditions, coupled with warm winds, have greatly increased the danger of fire in the state;

(h) In the early stages of the 2002 fire season alone, there have been several hundred fires in the state of Colorado which have burned several hundred thousand acres;

(i) Due to the severe fire dangers, the state and many counties and communities have instituted fire restrictions in an effort to reduce the extremely high risk of fire within their boundaries;

(j) Despite these and other efforts to avert fires during these drought conditions, many fires have been started through the knowing, reckless, or negligent acts of individuals;

(k) Governor Owens publicly recognized both the severe drought conditions and the related fire danger in the state and requested the United States Department of Agriculture to declare the state of Colorado an emergency drought area. The Governor further directed the Colorado water availability task force to activate a statewide drought response plan.

(l) Among its several recommendations as set forth in its report to Governor Owens, dated May 1, 2002, the Colorado water availability task force recommended increasing the liability of those individuals who negligently cause wildfires during a drought emergency.

(2) The general assembly hereby determines and declares that, due to the extreme drought conditions and related fire danger, it is appropriate to raise the awareness of the citizens of the state of Colorado about the drought conditions and to deter behavior that may result in fire by increasing the civil liability of those who knowingly cause wildfires. The general assembly further declares that it is in the best interests of the citizens of the state of Colorado for the experts on the Colorado water availability task force to continue to monitor drought conditions and to develop additional recommendations to the general assembly concerning further legislation that may be advisable and necessary for the protection of the state during drought conditions.

SECTION 2. 13-21-105, Colorado Revised Statutes, is amended to read:

13-21-105. Damages from fire set in woods or prairie - treble damages during drought conditions. (1) If any person sets fire to any woods or prairie so as to damage any other person, such person shall make satisfaction for the damage to the party injured, to be recovered in an action before any court of competent jurisdiction.

(2) (a) IF A STATE OF EMERGENCY OR DISASTER DUE TO DROUGHT HAS BEEN DECLARED BY THE GOVERNOR AT THE TIME A PERSON KNOWINGLY SETS FIRE TO ANY WOODS OR PRAIRIE AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, SUCH PERSON

MAY BE HELD LIABLE FOR TREBLE DAMAGES TO ANY INJURED PARTY.

(b) (I) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT APPLY TO ANY OPEN BURNING CONDUCTED IN THE COURSE OF AGRICULTURAL OPERATIONS OR TO ANY STATE, MUNICIPAL, OR COUNTY FIRE MANAGEMENT OPERATIONS.

(II) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT APPLY TO ANY OTHER PERSON SEEKING TO CONDUCT OTHER PRESCRIBED OR CONTROLLED FIRES SUCH AS GRASSLAND, FOREST, OR HABITAT MANAGEMENT ACTIVITIES, IF SUCH PERSON HAS FIRST OBTAINED WRITTEN AUTHORITY FROM THE STATE FORESTER.

SECTION 3. Part 21 of article 32 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-32-2105.5. Water availability task force - drought condition recommendations - legislative declaration - repeal. (1) THE GENERAL ASSEMBLY HEREBY ACKNOWLEDGES AND COMMENDS THE DEDICATION AND RESPONSIVENESS OF THE EXPERTS ON THE COLORADO WATER AVAILABILITY TASK FORCE IN THE OFFICE OF EMERGENCY MANAGEMENT AND THE COLORADO WATER CONSERVATION BOARD FOR THEIR WORK AND RECOMMENDATIONS ADDRESSING DROUGHT EMERGENCY CONDITIONS IN COLORADO. THE GENERAL ASSEMBLY FURTHER RECOGNIZES THE IMPORTANCE AND ADVISABILITY OF THE EXECUTIVE BRANCH AND THE LEGISLATIVE BRANCH WORKING IN COLLABORATION TO ADDRESS THE SERIOUS CONCERNS RAISED BY THE EXTREME CONDITIONS CREATED BY DROUGHT IN ORDER TO PROTECT THE CITIZENS OF THE STATE.

(2) FOR THE REASONS SET FORTH IN SUBSECTION (1) OF THIS SECTION, THE GENERAL ASSEMBLY HEREBY ENCOURAGES THE GOVERNOR TO DIRECT THE COLORADO WATER AVAILABILITY TASK FORCE TO CONTINUE TO MONITOR DROUGHT CONDITIONS AND RESPONSES TO EMERGENCIES AND TO FURTHER DEVELOP ITS RECOMMENDATIONS, AS INITIALLY PRESENTED TO THE GOVERNOR ON MAY 1, 2002, AND TO REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1, 2002, REGARDING ITS RECOMMENDATIONS, IF ANY, FOR LEGISLATION ADDRESSING DROUGHT EMERGENCIES WHICH IT DEEMS ADVISABLE AND NECESSARY FOR THE PROTECTION OF THE CITIZENS OF THE STATE OF COLORADO.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2003.

SECTION 4. Part 2 of article 33 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33-203. State forester - authority to permit controlled burns during drought conditions - civil. THE STATE FORESTER MAY PROVIDE WRITTEN AUTHORITY TO PERSONS SEEKING TO CONDUCT PRESCRIBED OR CONTROLLED FIRES, SUCH AS GRASSLAND, FOREST, OR HABITAT MANAGEMENT ACTIVITIES, DURING DROUGHT CONDITIONS AS SPECIFIED IN SECTION 13-21-105 (2), C.R.S. IN ISSUING WRITTEN AUTHORITY FOR PRESCRIBED OR CONTROLLED FIRES, THE STATE FORESTER SHALL BE IN CONFORMITY WITH AND SHALL NOT SUPERSEDE ANY STATE OR LOCAL BANS ON FIRES.

SECTION 5. Effective date - applicability. This act shall take effect upon passage and shall apply to causes of action arising on or after said date.

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

Approved: July 18, 2002