

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 306

AN ACT

To repeal sections 316.250, 537.346, 537.347, and 537.348, RSMo, and to enact in lieu thereof four new sections relating to landowner liability, with existing penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 316.250, 537.346, 537.347, and 537.348, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 316.250, 537.346, 537.347, and 537.348, to read as follows:

316.250. 1. This section shall be known and may be cited as "Ethan's Law".

2. Every owner of a for-profit private swimming pool or facility shall maintain adequate insurance coverage in an amount of not less than one million dollars per occurrence for any liability incurred in the event of injury or death of a patron to such swimming pool or facility, including any liability incurred under paragraph ~~[(b)]~~ (a) of subdivision (3) of section 537.348. Such owners shall be required to register with the department of public safety and provide proof of such insurance coverage at the time of registration and when requested by any state or local governmental agency responsible for the enforcement of this section.

3. As used in this section, the following terms shall mean:

(1) "Owner", the owner of the land, including but not limited to a lessee, tenant, mortgagee in possession and the person in charge of the land on which a swimming pool is located;

(2) "Swimming pool or facility", any for-profit privately owned tank or body of water with a capacity of less than five hundred patrons which charges a fee per admission and is used and maintained for swimming or bathing purposes which has a maximum depth of greater than twenty-four inches. "Swimming pool or facility" shall include, but not be limited to, a swimming pool on lands in connection with the operation of any type of for-profit privately owned amusement or recreational park. "Swimming pool or facility" does not include a swimming pool or facility owned by a hotel, motel, public or governmental body, agency, or authority, a naturally occurring body of water or stream, or a body of water established by a person or persons and used for watering livestock, irrigation, or storm water management.

4. Any owner who violates the provisions of this section shall not be permitted to remain in operation until such owner meets the requirements of this section. Any such owner who allows operation of a swimming pool or facility in violation of this section shall be subject to a civil penalty of two hundred fifty dollars per day for each day of continued violation up to a maximum of ten thousand dollars and may be subject to liability for the costs incurred by the state or a political subdivision for enforcing the provisions of this section. In a separate court action, the attorney general may seek reimbursement on behalf of the state and a political subdivision may seek reimbursement on behalf of the political subdivision for costs incurred as a result of enforcing the provisions of this section. For purposes of this section, "each day of the violation" means each day that the swimming pool is operational and open for business and remains in violation of this section. It shall

not include days that the swimming pool is not operational and open for business.

5. In addition, any owner who intentionally violates the provisions of this section is guilty of a class A misdemeanor. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

6. The department of public safety shall implement and, with the assistance of local law enforcement agencies, enforce the provisions of this section.

7. An insurance company providing insurance coverage under this section shall notify the department of public safety if any owner of a swimming pool or facility as defined in this section terminates, cancels, or fails to renew such coverage. The department may utilize local law enforcement agencies to enforce the provisions of this section.

537.346. 1. Except as provided in sections 537.345 to 537.348, and section 537.351, an owner of land owes no duty of care to any person who enters on the land without charge to keep his or her land safe for recreational use or to give any general or specific warning with respect to any natural or artificial condition, structure, or personal property thereon.

2. No owner of land shall be liable for injuries of a trespasser occurring on his or her residential area or noncovered land, as those terms are defined in section 537.348, if such area or land is adjacent to a park, as defined in section 253.010, or a trail, as defined in

section 258.100, if such trespasser is accessing or accessed the owner's property from the adjacent park or trail.

537.347. Except as provided in sections 537.345 to 537.348, an owner of land who directly or indirectly invites or permits any person to enter his or her land for recreational use, without charge, whether or not the land is posted, or who directly or indirectly invites or permits any person to enter his or her land for recreational use in compliance with a state-administered recreational access or wildlife management program, does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such person the status of an invitee, or any other status requiring of the owner a duty of special or reasonable care;

(3) Assume responsibility for or incur liability for any injury to such person or property caused by any natural or artificial condition, structure or personal property on the premises; or

(4) Assume responsibility for any damage or injury to any other person or property caused by an act or omission of such person.

537.348. Nothing in this act shall be construed to create liability, but it does not limit liability that otherwise would be incurred by those who use the land of others, or by owners of land for:

(1) Malicious or grossly negligent failure to guard or warn against a dangerous condition, structure, personal property which the owner knew or should have known to be dangerous, or negligent failure to guard or warn against an ultrahazardous condition which the owner knew or should have known to be dangerous;

(2) Injury suffered by a person who has paid a charge for entry to the land; or

(3) Injuries occurring on or in:

(a) [Any land within the corporate boundaries of any city, municipality, town, or village in this state;

(b)] Any swimming pool. "Swimming pool" means a pool or tank, especially an artificial pool or tank, intended and adapted for swimming and held out as a swimming pool;

[(c)] (b) Any residential area. "Residential area" as used [herein] in this section means [a tract of land of one acre or less predominately used for residential purposes, or a tract of land of any size used for multifamily residential services] land used for residential purposes in an area in which housing predominates, as opposed to industrial and commercial areas, and any land used for farming or agricultural purposes; or

[(d)] (c) Any noncovered land. "Noncovered land" as used [herein] in this section means any portion of any land, the surface of which portion is actually used primarily for commercial, industrial, mining or manufacturing purposes; provided, however, that use of any portion of any land primarily for agricultural, grazing, forestry, conservation, natural area, owner's recreation or similar or related uses or purposes shall not under any circumstances be deemed to be use of such portion for commercial, industrial, mining or manufacturing purposes.