

SENATE BILL NO. 306

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

1419S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 316.250 and 537.348, RSMo, and to enact in lieu thereof two new sections relating to landowner liability.

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

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2 repealed and two new sections enacted in lieu thereof, to be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

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

3 2. Every owner of a for-profit private swimming pool
4 or facility shall maintain adequate insurance coverage in an
5 amount of not less than one million dollars per occurrence
6 for any liability incurred in the event of injury or death
7 of a patron to such swimming pool or facility, including any
8 liability incurred under paragraph [(b)] **(a)** of subdivision
9 (3) **of subsection 1** of section 537.348. Such owners shall
10 be required to register with the department of public safety
11 and provide proof of such insurance coverage at the time of
12 registration and when requested by any state or local
13 governmental agency responsible for the enforcement of this
14 section.

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

17 (1) "Owner", the owner of the land, including but not
18 limited to a lessee, tenant, mortgagee in possession and the

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 person in charge of the land on which a swimming pool is
20 located;

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

36 4. Any owner who violates the provisions of this
37 section shall not be permitted to remain in operation until
38 such owner meets the requirements of this section. Any such
39 owner who allows operation of a swimming pool or facility in
40 violation of this section shall be subject to a civil
41 penalty of two hundred fifty dollars per day for each day of
42 continued violation up to a maximum of ten thousand dollars
43 and may be subject to liability for the costs incurred by
44 the state or a political subdivision for enforcing the
45 provisions of this section. In a separate court action, the
46 attorney general may seek reimbursement on behalf of the
47 state and a political subdivision may seek reimbursement on
48 behalf of the political subdivision for costs incurred as a
49 result of enforcing the provisions of this section. For
50 purposes of this section, "each day of the violation" means

51 each day that the swimming pool is operational and open for
52 business and remains in violation of this section. It shall
53 not include days that the swimming pool is not operational
54 and open for business.

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

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

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

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

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

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

13 (3) Injuries occurring on or in:

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

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

19 [(c)] (b) Any residential area, **except as provided in**
20 **subsection 2 of this section.** "Residential area" as used
21 [herein] **in this section** means a tract of land of one acre
22 or less predominately used for residential purposes, or a
23 tract of land of any size used for multifamily residential
24 services; or

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

35 **2. Notwithstanding any provision of paragraph (b) of**
36 **subdivision (3) of subsection 1 of this section, no owner of**
37 **land shall be liable for injuries occurring on his or her**
38 **residential area if such residential area is adjacent to a**
39 **park, as defined in section 253.010, or a trail, as defined**
40 **in section 258.100.**

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