

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 519
101ST GENERAL ASSEMBLY

0491H.04C

DANA RADEMAN MILLER, Chief Clerk

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.

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Section A. Sections 316.250, 537.346, 537.347, and 537.348, RSMo, are repealed and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

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

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

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

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

13 (2) "Swimming pool or facility", any for-profit privately owned tank or body of water
14 with a capacity of less than five hundred patrons which charges a fee per admission and is used
15 and maintained for swimming or bathing purposes which has a maximum depth of greater than
16 twenty-four inches. "Swimming pool or facility" shall include, but not be limited to, a swimming
17 pool on lands in connection with the operation of any type of for-profit privately owned

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 amusement or recreational park. "Swimming pool or facility" does not include a swimming pool
19 or facility owned by a hotel, motel, public or governmental body, agency, or authority, a naturally
20 occurring body of water or stream, or a body of water established by a person or persons and
21 used for watering livestock, irrigation, or storm water management.

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

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

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

41 7. An insurance company providing insurance coverage under this section shall notify
42 the department of public safety if any owner of a swimming pool or facility as defined in this
43 section terminates, cancels, or fails to renew such coverage. The department may utilize local
44 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
2 owner of land owes no duty of care to any person who enters on the land without charge to keep
3 his **or her** land safe for recreational use or to give any general or specific warning with respect
4 to any natural or artificial condition, structure, or personal property thereon.

5 **2. No owner of land shall be liable for injuries of a trespasser occurring on his or**
6 **her residential area or noncovered land, as those terms are defined in section 537.348, if**
7 **such area or land is adjacent to a park as defined in section 253.010 or a trail as defined**
8 **in section 258.100 if such trespasser is accessing or accessed the owner's property from the**
9 **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;
 - ~~[(e)]~~ **(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 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.

✓