

FIRST REGULAR SESSION

# HOUSE BILL NO. 806

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAILEY.

1792H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 316.250 and 537.348, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 316.250 and 537.348, to read as follows: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

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.

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

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

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

9 (3) Injuries occurring on or in:

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

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

14 ~~[(e)]~~ (b) Any residential area. "Residential area" as used herein means a tract of land of  
15 one acre or less predominately used for residential purposes, or a tract of land of any size used  
16 for multifamily residential services; or

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

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