

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 377
101ST GENERAL ASSEMBLY

1786H.03C

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 six 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Section A. Sections 316.250, 537.346, 537.347, and 537.348, RSMo, are repealed and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 six new sections enacted in lieu thereof, to be known as sections 316.250, 537.328, 537.346,
3 537.347, 537.348, and 537.354, 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.

537.328. 1. As used in this section, the following terms mean:

2 (1) "Camping", all aspects of visiting, staying at, using, and leaving a private
3 campground, including lodging of all types;

4 (2) "Inherent risks of camping", those dangers, hazards, or conditions that are an
5 integral part of camping including, but not limited to, the following:

6 (a) Features of the natural world, such as trees, tree stumps, naturally occurring
7 infectious agents, roots, brush, rocks, mud, sand, standing and moving water, and soil;

8 (b) Uneven and unpredictable terrain;

9 (c) Natural bodies of water and accessories permitting the use of natural bodies of
10 water, including piers, docks, swimming and aquatic sports, or recreation facilities or
11 areas;

12 (d) A lack of lighting, including lighting at campsites;

13 (e) Campfires contained in or outside a fire pit or an enclosure provided by the
14 private campground, bonfires, grass or brush fires, wildfires, and forest fires;

15 (f) Weather and weather-related events;

16 (g) Insects, birds, and other wildlife;

17 (h) Animals of other campers or visitors that cause injury, unless the private
18 campground owner or an employee or officer of the private campground owner has
19 accepted responsibility for care of the animal;

20 (i) A violation of safety rules or a disregard for signs or other methods of
21 communicating warnings;

22 (j) Another camper or visitor at the private campground acting in a negligent
23 manner, if the private campground owner or an employee or officer of the private
24 campground owner is not involved;

25 (k) Actions by a camper or visitor that exceed his or her physical limitations or
26 abilities;

27 (l) Actions by a camper or visitor involving climbing, rappeling, caving,
28 mountaineering, or any other related activity;

29 (m) Damage caused by fireworks from a camper, visitor, or offsite entity not
30 authorized by the private campground owner or employee or officer of a private
31 campground owner; and

32 (n) Any person coming onto the campsite not reported to the private campground
33 owner or an employee or officer of the private campground owner;

34 (3) "Private campground", any parcel or tract of land, including buildings and
35 other structures, that is owned or operated by a private property owner where five or more
36 campsites are made available for use as temporary living quarters for recreational,
37 camping, travel, or seasonal use. The term "private campground" shall also include
38 recreational vehicle parks.

39 2. Except as provided in subsection 4 of this section, a private campground owner
40 or an employee or officer of a private campground owner shall not be liable for acts or
41 omissions related to camping at a private campground if a person is injured or killed or
42 property is damaged as a result of an inherent risk of camping.

43 3. This section shall not apply to any employer-employee relationship governed by
44 the provisions of chapter 287.

45 **4. The provisions of subsection 2 of this section shall not prevent or limit liability**
46 **of a private campground owner or an employee or officer of a private campground owner**
47 **who:**

48 **(1) Intentionally causes the injury, death, or property damage;**

49 **(2) Acts with a willful or wanton disregard for the safety of the person or property**
50 **damaged. As used in this subdivision, "willful and wanton" means conduct committed**
51 **with an intentional or reckless disregard for the safety of others;**

52 **(3) Fails to use that degree of care that an ordinarily careful and prudent person**
53 **would use under the same or similar circumstances; or**

54 **(4) Fails to conspicuously post warning signs of a dangerous, inconspicuous**
55 **condition known to the owner of the private campground, or his or her employees or**
56 **officers, on the property that the owner owns, leases, rents, or is otherwise in lawful control**
57 **of or in possession of if the owner, employee, or officer is aware of the condition by reason**
58 **of a prior injury involving the same location or the same mechanism of injury. Such**
59 **warning signs shall appear in black letters on a white background with each letter to be**
60 **a minimum of one inch in height.**

61 **5. Every written contract entered into by a private campground owner or an**
62 **employee or officer of a private campground owner shall contain, in clearly readable print,**
63 **the warning notice specified in this subsection. The signs described in subdivision (4) of**
64 **subsection 4 of this section and contracts described in this subsection shall contain the**
65 **following warning notice:**

66 **"WARNING**

67 **Under Missouri law, a private campground owner or an employee or officer of a**
68 **private campground owner is not liable for an injury to or the death of a person or any**
69 **property damage resulting from the inherent risks of camping under the Revised Statutes**
70 **of Missouri."**

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.

537.354. 1. This section shall be known and may be cited as the "Prescribed Burning Act".

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

(1) "Agent of an owner of land", any person who has permission from a landowner to participate in a prescribed burning on the landowner's property;

(2) "Certified prescribed burn manager", a person who successfully completes a prescribed burn certification program approved by the Missouri department of conservation;

(3) "Prescribed burn plan", a written plan that is in a format approved by the Missouri department of conservation establishing the conditions and methods to perform a prescribed burning;

(4) "Prescribed burning", the planned and controlled application of fire to existing vegetative fuels in order to accomplish one or more specific land management objectives including, but not limited to, vegetative fuel reduction, silvicultural treatments, wildlife habitat improvement, and management of grassland and other plant communities.

3. No owner of land or agent of an owner of land shall be liable for damage, injury, or loss caused by a prescribed burning or the resulting smoke of a prescribed burning unless the owner of land or agent of an owner of land is proven to be negligent.

4. No certified prescribed burn manager shall be liable for damage, injury, or loss caused by a prescribed burning or the resulting smoke of a prescribed burning conducted under a prescribed burn plan unless the certified prescribed burn manager is proven to be negligent.

5. The provisions of subsections 3 and 4 of this section shall not apply to any damage, injury, or loss caused by a prescribed burning or the resulting smoke from a prescribed burning to any of the following:

(1) Property, lands, rights-of-way, or easements owned by a public utility or municipally owned utility;

(2) Property, lands, rights-of-way, or easements owned by a rural electric cooperative organized or operating under the provisions of chapter 394, or any corporation organized on a nonprofit or cooperative basis as described in subsection 1 of section 394.200, or any electrical corporation operating under a cooperative business plan as described in subsection 2 of section 393.110; or

(3) Property, lands, rights-of-way, or easements appurtenant or incidental to lands controlled by any railroad.

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