

FIRST REGULAR SESSION

SENATE BILL NO. 411

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

1970S.011

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, with existing penalty provisions.

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2 repealed and two new sections enacted in lieu thereof, to be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 section 537.348. Such owners shall be required to
10 register with the department of public safety and provide
11 proof of such insurance coverage at the time of registration
12 and when requested by any state or local governmental agency
13 responsible for the enforcement of this section.

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

16 (1) "Owner", the owner of the land, including but not
17 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.

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

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

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

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

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

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

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

537.348. 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. "Residential area" as
20 used herein means a tract of land of one acre or less
21 predominately used for residential purposes, or a tract of
22 land of any size used for multifamily residential services;
23 or

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

✓