

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 551**

Introduced by Schilz, 47.

Read first time January 23, 2013

Committee:

A BILL

1 FOR AN ACT relating to recreation liability; to amend sections  
 2 37-729, 37-730, 37-733, 37-734, 37-735, and 37-736,  
 3 Reissue Revised Statutes of Nebraska; to name the  
 4 sections as the Recreation and Tourism Promotion Act; to  
 5 change and eliminate provisions relating to liability of  
 6 owners of premises used by participants for recreation  
 7 and tourism activities; to harmonize provisions; to  
 8 provide an operative date; to repeal the original  
 9 sections; and to outright repeal sections 37-731 and  
 10 37-732, Reissue Revised Statutes of Nebraska.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 37-729, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           37-729 (1) Sections 37-729 to 37-736 and section 4 of  
4 this act shall be known and may be cited as the Recreation and  
5 Tourism Promotion Act.

6           (2) For purposes of sections 37-729 to 37-736: the  
7 Recreation and Tourism Promotion Act:

8           ~~(1) Land includes roads, water, watercourses, private~~  
9 ~~ways, and buildings, structures, and machinery or equipment thereon~~  
10 ~~when attached to the realty;~~

11           ~~(2) Owner includes tenant, lessee, occupant, or person in~~  
12 ~~control of the premises;~~

13           ~~(3) Recreational purposes includes, but is not limited~~  
14 ~~to, any one or any combination of the following: Hunting, fishing,~~  
15 ~~swimming, boating, camping, picnicking, hiking, pleasure driving,~~  
16 ~~nature study, waterskiing, winter sports, and visiting, viewing, or~~  
17 ~~enjoying historical, archaeological, scenic, or scientific sites, or~~  
18 ~~otherwise using land for purposes of the user; and~~

19           ~~(4) Charge means the amount of money asked in return for~~  
20 ~~an invitation to enter or go upon the land.~~

21           (a) Fee means the amount of money asked in return for an  
22 invitation or permission to enter or go upon the premises;

23           (b) Inherent risks means those conditions, dangers, or  
24 hazards that are an integral part of land or waters used for  
25 recreation or tourism activities, including the following:

1           (i) Surface and subsurface conditions and natural  
2 conditions of land, vegetation, and waters;

3           (ii) The behavior of wild or domestic animals;

4           (iii) The ordinary dangers of structures or equipment  
5 used in farming or ranching operations when the structures or  
6 equipment are being used for a purpose for which a reasonable person  
7 should know that the structures or equipment are intended; and

8           (iv) The potential of a participant to act in a negligent  
9 way that may contribute to injury to the participant or others,  
10 whether failing to follow safety procedures or failing to act with  
11 reasonable caution while engaging in a recreation or tourism  
12 activity;

13           (c) Owner includes any person who is a tenant, lessee,  
14 occupant, or person in control of the premises, or any agent of such  
15 a person;

16           (d) Participant means an individual who engages in  
17 recreation or tourism activities on premises owned by another, but  
18 does not include an owner of the premises;

19           (e) Person means an individual, governmental entity,  
20 political subdivision, corporation, limited liability company,  
21 partnership, unincorporated association, or other legal or commercial  
22 entity;

23           (f) Premises includes realty, land, roads, pathways,  
24 trails, water, watercourses, private ways, and buildings and  
25 structures attached to the realty; and

1           (g) Recreation and tourism activities include, but are  
2 not limited to, any one or any combination of the following: Hunting,  
3 fishing, swimming, boating, canoeing, kayaking, tubing, water sports,  
4 camping, picnicking, hiking, backpacking, bicycling, horseback  
5 riding, pleasure driving, nature study, birding, farm, ranch and  
6 vineyard tours and activities, waterskiing, snow-shoeing and cross-  
7 country skiing, and visiting and viewing historical, archaeological,  
8 scenic or scientific sites, and similar activities.

9           Sec. 2. Section 37-730, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           37-730 The purpose of ~~sections 37-729 to 37-736~~ the  
12 Recreation and Tourism Promotion Act is to encourage owners of ~~land~~  
13 premises to make available to the public land and water areas for  
14 ~~recreational purposes~~ recreation and tourism activities by limiting  
15 ~~their~~ the owner's liability toward ~~persons entering thereon and~~  
16 ~~toward persons who may be injured or otherwise damaged by the acts or~~  
17 ~~omissions of persons entering thereon.~~ participants entering the  
18 premises.

19           Sec. 3. Section 37-733, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           37-733 Unless otherwise agreed in writing, an owner of  
22 ~~land~~ premises leased to the state for ~~recreational purposes~~  
23 recreation or tourism activities owes no duty of care to keep that  
24 ~~land~~ premises safe for entry or use by others or to give warning to  
25 persons entering or going upon such ~~land~~ premises of any hazardous

1 conditions, uses, structures, inherent risks, or activities thereon.  
2 An owner who leases ~~land~~ premises to the state for ~~recreational~~  
3 ~~purposes~~ recreation or tourism activities shall not by giving such  
4 lease (1) extend any assurance to any person using the land that the  
5 premises are safe for any purpose, (2) confer upon such persons the  
6 legal status of an invitee or licensee to whom a duty of care is  
7 owed, or (3) assume responsibility for or incur liability for any  
8 injury to person or property caused by an act or omission of a person  
9 who enters upon the leased ~~land~~ premises. The provisions of this  
10 section shall apply whether the person entering upon the leased ~~land~~  
11 premises is an invitee, licensee, participant, trespasser, or  
12 otherwise. For purposes of this section, owner does not include the  
13 State of Nebraska or any political subdivision thereof.

14           Sec. 4. (1) Except as provided in section 37-734, an  
15 owner who allows a participant on the owner's premises for recreation  
16 and tourism activities shall not be liable for injury to or death of  
17 the participant or damage to the participant's property resulting  
18 from an inherent risk on the owner's premises.

19           (2) Except as provided in section 37-734, a participant  
20 or participant's representative cannot make a claim against, maintain  
21 an action against, or recover from an owner, who allows a participant  
22 on the owner's premises for recreation and tourism activities, for  
23 injury to or death of the participant or damage to the participant's  
24 property resulting from an inherent risk on the owner's premises.

25           Sec. 5. Section 37-734, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           37-734 (1) Nothing in sections 37-729 to 37-736 the  
3 Recreation and Tourism Promotion Act limits in any way any liability  
4 ~~which otherwise exists (1) for willful or malicious failure to guard~~  
5 ~~or warn against a dangerous condition, use, structure, or activity or~~  
6 ~~(2) for injury suffered in any case where the owner of land charges~~  
7 ~~the person or persons who enter or go on the land. of an owner:~~

8           (a) Who has actual knowledge of a particular dangerous  
9 condition on the premises, does not make the particular danger known  
10 to the participant, and the particular danger proximately causes  
11 injury to or death of the participant or damage to the participant's  
12 property;

13           (b) Who reasonably should have known of a particular  
14 dangerous condition of equipment used in a recreation and tourism  
15 activity, does not make the danger known to the participant, and the  
16 danger proximately causes injury to or death of the participant or  
17 damage to the participant's property;

18           (c) Who fails to properly train, or improperly or  
19 inadequately trains, employees who are actively involved in  
20 recreation and tourism activities and an act or omission of the  
21 employee resulting from improper or inadequate training proximately  
22 causes injury to or death of the participant or damage to the  
23 participant's property;

24           (d) Who commits an act or omission that is the proximate  
25 cause of injury to or the death of the participant or damage to the

1 participant's property, which act or omission:

2 (i) Constitutes willful or wanton disregard for the  
3 safety of the participant;

4 (ii) Constituted gross negligence; or

5 (iii) Was intentional.

6 (2) Nothing in section 4 of this act limits in any way  
7 any liability of an owner who receives a fee for allowing a  
8 participant on the premises if the owner fails to do at least one of  
9 the following:

10 (a) Post and maintain signage containing the warning in  
11 subsection (c) of this section in a clearly visible and conspicuous  
12 location at or near the entrance to the property used for recreation  
13 and tourism activities; or

14 (b) Include the warning in subsection (c) of this section  
15 in any written contract between the owner of the property and each  
16 participant allowed on the premises for a fee. Such warning shall be  
17 in a conspicuous location within the contract and be written in not  
18 less than twelve point, bold-face type.

19 (c) The warning notice shall read as follows: WARNING-  
20 Under Nebraska law, an owner of property, including lands and waters,  
21 is not liable for the injury to or death of the participant in  
22 recreation and tourism activities or damage to the participant's  
23 property resulting from the inherent risks of such activities.  
24 Inherent risks include without limitation the risk of animals, land  
25 and water conditions, and the potential for you or another

1 participant to act in a negligent manner that may contribute to your  
2 own injury or death. You are assuming the risk of participating in  
3 the recreation and tourism activities for which you are entering the  
4 owner's premises.

5           Sec. 6. Section 37-735, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           37-735 Nothing in ~~sections 37-729 to 37-736~~ the  
8 Recreation and Tourism Promotion Act creates a duty of care or ground  
9 of liability for injury to person or property.

10           Sec. 7. Section 37-736, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           37-736 Nothing in ~~sections 37-729 to 37-736~~ the  
13 Recreation and Tourism Promotion Act limits in any way the obligation  
14 of a ~~person-participant~~ entering upon or using the ~~land-premises~~ of  
15 another for ~~recreational purposes~~ recreation and tourism activities  
16 to exercise due care in his or her use of such ~~land-premises~~ in his  
17 or her recreation or tourism activities thereon.

18           Sec. 8. This act becomes operative on January 1, 2014.

19           Sec. 9. Original sections 37-729, 37-730, 37-733, 37-734,  
20 37-735, and 37-736, Reissue Revised Statutes of Nebraska, are  
21 repealed.

22           Sec. 10. The following sections are outright repealed:  
23 Sections 37-731 and 37-732, Reissue Revised Statutes of Nebraska.