

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 153

Introduced by Lautenbaugh, 18.

Read first time January 09, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to recreation; to amend sections 37-729,
2 37-730, 37-731, 37-732, 37-733, 37-734, 37-735, and
3 37-736, Reissue Revised Statutes of Nebraska; to name
4 the Tourism Liability Act; to define and redefine
5 terms; to change provisions relating to owner liability
6 for recreation and tourism activities; to harmonize
7 provisions; to provide an operative date; and to repeal
8 the original sections.

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

1 Section 1. Sections 37-729 to 37-736 and this section
2 shall be known and may be cited as the Tourism Liability Act.

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

5 37-729 For purposes of ~~sections 37-729 to 37-736~~ the
6 Tourism Liability Act:

7 (1) Fee means the amount of money asked for in return
8 for an invitation to enter or use the property for recreation or
9 tourism activities;

10 (2) Gross negligence means the absence of even slight
11 care in the performance of a duty involving an unreasonable risk of
12 harm. It is great or excessive negligence in a very high degree;

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

16 ~~(2) (3) Owner includes~~ means a private individual or a
17 private entity, including a small tourism business, that is a title
18 holder, tenant, lessee, occupant, or person is otherwise in control
19 of the premises; property;

20 (4) Property means land, roads, water, watercourses,
21 private ways, and buildings, structures, and machinery or equipment
22 thereon;

23 ~~(3) (5) Recreational purposes includes,~~ Recreation or
24 tourism activities include, but is are not limited to, outfitting,
25 hunting, fishing, horseback riding, swimming, boating, canoeing,

1 kayaking, farm and ranch tours and activities, any one or any
 2 combination of the following: Hunting, fishing, swimming, boating,
 3 camping, picnicking, hiking, bicycling, pleasure driving, nature
 4 study, waterskiing, winter sports, and visiting, viewing, or
 5 enjoying historical, archaeological, scenic, or scientific sites,
 6 or otherwise using land for purposes of the user, the property for
 7 other recreation or tourism activities; and

8 (6) Small tourism business means a tourism business with
 9 average annual receipts, averaged over the previous three annual
 10 periods measured from the time of any incident for which liability
 11 of the small tourism business is asserted by an injured claimant,
 12 of not more than five million dollars and is engaged in providing
 13 recreation or tourism activities to its customers.

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

16 Sec. 3. Section 37-730, Reissue Revised Statutes of
 17 Nebraska, is amended to read:

18 37-730 The purpose of sections 37-729 to 37-736 the
 19 Tourism Liability Act is to encourage owners of land to make
 20 property available to the public land and water areas for
 21 ~~recreational purposes~~ recreation or tourism activities by limiting
 22 ~~their~~ the owners' liability toward persons entering or using the
 23 property for recreation or tourism activities. entering thereon and
 24 toward persons who may be injured or otherwise damaged by the acts
 25 or omissions of persons entering thereon.

1 Sec. 4. Section 37-731, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 37-731 Subject to section 37-734, an owner of ~~land~~
4 property owes no duty of care to keep the ~~premises~~ property safe
5 for entry or use by others for ~~recreational purposes~~ recreation or
6 tourism activities or to give any warning of a dangerous condition,
7 use, structure, or activity on such ~~premises~~ property to persons
8 entering ~~for such purposes~~ or using such property for recreation
9 or tourism activities.

10 Sec. 5. Section 37-732, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 37-732 Subject to section 37-734, an owner of ~~land~~
13 property who either directly or indirectly invites or permits,
14 with or without a fee, persons to enter or use such property
15 for recreation or tourism activities without charge any person to
16 use such ~~property for recreational purposes~~ does not thereby (1)
17 extend any assurance that the ~~premises~~ property is safe for
18 any purpose, (2) confer upon such persons the legal status of an
19 invitee or licensee to whom a duty of care is owed, or (3) assume
20 responsibility for or incur liability for any injury to ~~person~~
21 persons or property caused by an act or omission of such persons.

22 Sec. 6. Section 37-733, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 37-733 Unless otherwise agreed in writing, an owner
25 of ~~land~~ property leased to the state for ~~recreational purposes~~

1 recreation or tourism activities owes no duty of care to keep
 2 that ~~land~~ property safe for entry or use by others or to give
 3 warning to persons entering or going upon such ~~land~~ property of
 4 any hazardous conditions, uses, structures, or activities thereon.
 5 An owner who leases ~~land~~ property to the state for ~~recreational~~
 6 ~~purposes~~ recreation or tourism activities shall not by giving
 7 such lease (1) extend any assurance to any person using the ~~land~~
 8 property that the premises are safe for any purpose, (2) confer
 9 upon such persons the legal status of an invitee or licensee to
 10 whom a duty of care is owed, or (3) assume responsibility for
 11 or incur liability for any injury to person or property caused
 12 by an act or omission of a person who enters upon the leased
 13 ~~land~~ property. The provisions of this section shall apply whether
 14 the person entering upon the leased ~~land~~ property is an invitee,
 15 licensee, trespasser, or otherwise.

16 Sec. 7. Section 37-734, Reissue Revised Statutes of
 17 Nebraska, is amended to read:

18 37-734 ~~Nothing in sections 37-729 to 37-736 limits (1)~~
 19 Except as provided in subsection (2) of this section, the Tourism
 20 Liability Act does not limit the in any way any liability of the
 21 owner which otherwise exists (1) for intentional conduct, gross
 22 negligence, or willful or malicious failure to guard or warn
 23 against a dangerous condition, use, structure, or activity on the
 24 owner's property to persons entering or using such property for
 25 recreation or tourism activities. ~~or (2) for injury suffered in~~

1 any case where the owner of land charges the person or persons who
2 enter or go on the land.

3 (2) The liability of the owner of a small tourism
4 business whose gross negligence causes injury or death to a person
5 entering or using property of the owner for recreation or tourism
6 activities is limited to (a) five hundred thousand dollars for
7 one person per occurrence or (b) one million dollars for two
8 or more persons per occurrence. The amount recoverable from an
9 insurer under a liability policy covering a small tourism business
10 in a situation described in this subsection shall not exceed the
11 limitations in this subsection.

12 Sec. 8. Section 37-735, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 37-735 Nothing in sections 37-729 to 37-736 the Tourism
15 Liability Act creates a duty of care or ground of liability for
16 injury to person or property.

17 Sec. 9. Section 37-736, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 37-736 Nothing in sections 37-729 to 37-736 the Tourism
20 Liability Act limits in any way the obligation of a person entering
21 ~~upon~~ or using the land property of another for ~~recreational~~
22 ~~purposes~~ recreation or tourism activities to exercise due care in
23 his or her use of such land property in his or her activities
24 thereon.

25 Sec. 10. This act becomes operative on January 1, 2010.

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1 Sec. 11. Original sections 37-729, 37-730, 37-731,
2 37-732, 37-733, 37-734, 37-735, and 37-736, Reissue Revised
3 Statutes of Nebraska, are repealed.