

**SENATE BILL No. 381**

By Committee on Judiciary

2-6

1 AN ACT concerning the Kansas recreational trails act; relating to criminal  
2 penalties for certain conduct; duties of the responsible party for a  
3 recreational trail; duties of the attorney general; amending K.S.A. 58-  
4 3211, 58-3212 and 58-3213 and K.S.A. 2017 Supp. 58-3214 and 58-  
5 3215 and repealing the existing sections.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) (1) It shall be unlawful for any person to do any of  
9 the following:

- 10 (A) Harm any animal along any recreational trail or rail corridor;  
11 (B) throw, push, pitch or otherwise cast any object, matter or thing  
12 into a fenced area where an animal is confined along any recreational trail  
13 or rail corridor;  
14 (C) destroy or vandalize any private property along any recreational  
15 trail or rail corridor;  
16 (D) litter, dump or dispose of any form of trash along any recreational  
17 trail or rail corridor, except in trash receptacles;  
18 (E) drive any motor vehicle on any recreational trail or rail corridor,  
19 except where permitted by signage;  
20 (F) block any adjacent land owner's access to a rail corridor; or  
21 (G) throw cigarette butts onto or from any recreational trail or rail  
22 corridor.

23 (2) Violation of this subsection is a class B nonperson misdemeanor.

24 (3) A person who violates the provisions of this subsection may also  
25 be liable for any loss of private property or loss of life, including, but not  
26 limited to, farm animals.

27 (4) A person who violates the provisions of this subsection may also  
28 be prosecuted for, convicted of, and punished for animal cruelty, criminal  
29 damage to property, criminal littering or any other applicable crime under  
30 the Kansas criminal code.

31 (b) Every person riding a bicycle on a recreational trail shall follow  
32 the rules for riding a bicycle upon a roadway set forth in article 15 of  
33 chapter 8 of the Kansas Statutes Annotated, and amendments thereto,  
34 including, but not limited to, yielding to pedestrians, stopping for stop  
35 signs at intersections, riding in staggered formation when meeting  
36 someone else on the trail and riding in a safe manner.

1       Sec. 2. K.S.A. 58-3211 is hereby amended to read as follows: 58-  
2 3211. *K.S.A. 58-3211 through 58-3216 and section 1, and amendments*  
3 *thereto, shall be known and may be cited as the Kansas recreational trails*  
4 *act. As used in this the act:*

5       (a) "Adjacent property owner" means a person or entity, other than a  
6 responsible party, who owns property or facilities on or adjacent to a  
7 recreational trail *or rail corridor*.

8       (b) "*Rail corridor*" means the rail bed on railroad rights-of-way and  
9 a strip of land that provides an easement and access to railroad rights-of-  
10 way where an abandonment has been set aside in favor of interim use as a  
11 recreational trail.

12       (c) "Recreational trail" or "trail" means a trail created pursuant to  
13 ~~subsection (d) of 16 U.S.C. 1247(d) (1983).~~

14       ~~(e)~~ (d) "Responsible party" means any person, for-profit entity, not-  
15 for-profit entity or governmental entity that is responsible for developing,  
16 operating or maintaining a recreational trail. "*Responsible party*" includes  
17 the holder of a certificate of interim trail use (CITU) or a notice of interim  
18 trail use (NITU), as issued by the federal surface transportation board.

19       Sec. 3. K.S.A. 58-3212 is hereby amended to read as follows: 58-  
20 3212. (a) The responsible party, at all times after transfer of the deed to the  
21 responsible party, shall:

22       (1) Perform the duties *related to noxious weeds* imposed by K.S.A. 2-  
23 1314, and amendments thereto, along the recreational trail *and the rail*  
24 *corridor*;

25       (2) provide for the safety, use and accessibility of existing easements,  
26 utility facilities and access licenses along the recreational trail *and the rail*  
27 *corridor*;

28       (3) provide for trail-user education and signs regarding trespassing  
29 laws and safety along the recreational trail *and the rail corridor*;

30       (4) provide for litter control and the enforcement of laws prohibiting  
31 littering along the recreational trail *and the rail corridor*, including, but not  
32 limited to, trail-user education and signs about laws prohibiting littering  
33 ~~and~~, the provision of trash receptacles ~~and~~, the cleanup of trash and litter  
34 *and the removal of any items dumped along the trail or rail corridor*;

35       (5) develop and maintain the recreational trail *and the rail corridor* in  
36 a condition that does not create a fire hazard *or a public nuisance*;

37       (6) designate the recreational trail *and the rail corridor* for  
38 nonmotorized vehicle use with exceptions only for motorized wheelchairs  
39 and maintenance, law enforcement and emergency vehicles;

40       (7) prohibit hunting or trapping on or from the recreational trail *and*  
41 *the rail corridor*;

42       (8) provide for law enforcement along the recreational trail *and the*  
43 *rail corridor*;

1 (9) grant easements to adjacent property owners to permit such  
2 owners to cross the recreational trail *and the rail corridor* in a reasonable  
3 manner consistent with the use of the adjacent property and with K.S.A.  
4 66-301 through 66-303, and amendments thereto;

5 (10) (A) maintain any existing fencing between the ~~trail~~ *rail corridor*  
6 and adjacent property; (B) maintain any future fencing installed between  
7 the ~~trail~~ *rail corridor* and adjacent property; (C) install between the ~~trail~~  
8 *rail corridor* and adjacent property fencing corresponding in class to that  
9 maintained on the remaining sides of such adjacent property; and (D) on  
10 request of an adjacent property owner, pay one-half the cost of installing  
11 fencing between the ~~trail~~ *rail corridor* and such property owner's adjacent  
12 property with a fence of the class requested by such property owner, if not  
13 all remaining sides of such property are fenced; ~~and~~

14 (11) (A) maintain the trail *and the rail corridor*; (B) maintain all  
15 bridges, culverts, roadway intersections and crossings on the trail *and the*  
16 *rail corridor*, essential to the reasonable and prudent operation of the trail  
17 *and the rail corridor* or needed for drainage, flood control or the use of  
18 easements for crossing the trail *and the rail corridor* between adjacent  
19 properties, or cause maintenance thereof by other parties that have  
20 assumed contractual responsibility therefor; ~~and~~ (C) install and maintain  
21 any warranted traffic signs on the trail *and the rail corridor*; *and (D)*  
22 *maintain the entire rail corridor in a condition that will facilitate the*  
23 *ability to reactivate rail service in the future without major reconstruction,*  
24 *in accordance with federal law, including, but not limited to, maintaining*  
25 *bridges, culverts and other critical structures according to railroad*  
26 *specifications so that future resumption of rail service is possible and*  
27 *grounded in reality;*

28 (12) *notify the attorney general and the federal surface*  
29 *transportation board prior to selling or transferring any property located*  
30 *within the rail corridor, removing or authorizing removal of bridges,*  
31 *culverts or other structures in the rail corridor, or allowing the*  
32 *construction of structures in the rail corridor;*

33 (13) *comply with applicable laws concerning the posting and*  
34 *removal of election signage in the rail corridor and notify the the attorney*  
35 *general for resolution of any disputes related to such compliance;*

36 (14) *if portable toilets are provided along the recreational trail,*  
37 *provide for such toilets to be maintained in a sanitary condition and*  
38 *provide for the cleanup of any spill from such toilets in an expedient*  
39 *manner after notification of a spill;*

40 (15) *not allow an adjacent land owner's personal property that is*  
41 *sitting on the rail corridor or hanging over the rail corridor to be*  
42 *removed, inhabited, used or confiscated without due process or mutual*  
43 *agreement of the owner;*

1       (16) *ensure that any use of pesticides, as defined in the Kansas*  
2 *pesticide law, along the recreational trail and the rail corridor is done by*  
3 *or under the supervision of a person certified pursuant to the Kansas*  
4 *pesticide law; and*

5       (17) *work with adjacent property owners to eliminate dangers to*  
6 *farm animals.*

7       (b) (1) If the responsible party is not a governmental entity, the  
8 responsible party shall file with the county clerk of each county where a  
9 portion of the recreational trail is or will be located a bond or proof of an  
10 escrow account in a Kansas financial institution, as defined by K.S.A. 16-  
11 117, and amendments thereto, payable to the county. The bond or proof of  
12 an escrow account shall be filed at the time of transfer of the deed to the  
13 responsible party and annually thereafter. The bond or escrow account  
14 shall be conditioned on the responsible party's performance, and, *except as*  
15 *provided in subsection (b)(3)*, shall be in an amount agreed upon between  
16 the responsible party and the county commission as sufficient to fully  
17 cover the annual costs *for a minimum of three years*, of:

18       ~~(A)~~ (A) Weed control along the trail *and the rail corridor*, as required  
19 by subsection (a)(1);

20       ~~(B)~~ (B) litter control along the trail *and the rail corridor*, as required  
21 by subsection (a)(4);

22       ~~(C)~~ (C) maintenance of the trail *and the rail corridor* in a condition  
23 that does not create a fire hazard, as required by subsection (a)(5);

24       ~~(D)~~ (D) installation and maintenance of fencing between the ~~trail~~ *rail*  
25 *corridor* and adjacent property within the county, as required by  
26 subsection (a)(10); and

27       ~~(E)~~ (E) installation and maintenance of signs along the trail *and the*  
28 *rail corridor*, as required by subsections (a)(3), (a)(4) and (a)(11)(C).

29       (2) If separate bonds are submitted to or escrow accounts established  
30 for the various counties through which the trail transverses, the annual  
31 costs listed above shall be only for that portion of the trail located within  
32 the particular county that is the holder of the bond or beneficiary of the  
33 escrow. A responsible party may submit a single bond or escrow account  
34 with multiple counties respectively as co-obligees or co-beneficiaries, but  
35 in that event the annual costs used in computation of the bond amount  
36 shall be for the entire trail length.

37       (3) *A county commission may agree to a bond or escrow account*  
38 *between the responsible party and the county commission in an amount*  
39 *that is sufficient to fully cover the annual costs for a minimum of one year.*  
40 *A county commission that agrees to a bond or escrow account between the*  
41 *responsible party and the county commission in an amount that is*  
42 *insufficient to cover the full amount of total annual costs for a minimum of*  
43 *three years must post the bond for the difference between the amount*

1 *agreed to and the full amount of the three-year costs.*

2 (c) If the responsible party is not a governmental entity, the  
3 responsible party shall file with the county clerk of each county where a  
4 portion of the recreational trail is or will be located, proof of liability  
5 insurance in an amount agreed ~~upon~~ *to* between the responsible party and  
6 the county commission as sufficient. Such proof shall be filed at the time  
7 of transfer of the deed to the responsible party and annually thereafter.

8 (d) The provisions of this section shall apply to all recreational trails,  
9 regardless of when approval to enter into negotiations for interim trail use  
10 is or was received from the appropriate federal agency.

11 (e) The provisions of this section may be modified or supplemented  
12 by any city governing body for recreational trails within the corporate  
13 limits of such city in the manner provided by K.S.A. 12-137 et seq., and  
14 amendments thereto. If a city governing body adopts requirements in  
15 addition to those provided by this section, the city shall pay all costs of  
16 compliance with such additional requirements.

17 Sec. 4. K.S.A. 58-3213 is hereby amended to read as follows: 58-  
18 3213. (a) Upon receipt of permission from the appropriate federal agency  
19 to enter into negotiations for interim trail use, the responsible party shall,  
20 *at least 90 days prior to beginning any trail construction*, give written  
21 notice to each adjacent property owner that the responsible party intends to  
22 build a recreational trail adjacent to the property owner's property. The  
23 responsible party may utilize the addresses to which real estate tax  
24 statements are sent, as maintained by county officials, for such notices.  
25 Such notice shall be given by first-class mail unless the notice is returned  
26 undelivered, in which case a further notice shall be given by certified mail.  
27 Further notice shall be published once each week for three consecutive  
28 weeks in the official newspaper of the county in which such trail is  
29 proposed to be located.

30 (b) *The provisions of this subsection shall only apply to recreational*  
31 *trails for which approval to enter into negotiations for interim trail use is*  
32 *received from the appropriate federal agency on or after July 1, 1996.*  
33 Before commencing development or operation of a recreational trail, the  
34 responsible party shall:

35 (1) Prepare a *written* project plan that includes: (A) The name and  
36 address of the responsible party; (B) an itemized estimate of the costs of  
37 the project and sources of funding for the project; and (C) maps of the  
38 recreational trail;

39 (2) submit by certified mail, not later than 180 days after receiving  
40 approval of interim trail use from the appropriate federal agency, the initial  
41 *written* project plan to the county commission of each county where a  
42 portion of the trail is to be located outside of city limits and to the  
43 governing body of each city where a portion of the trail is to be located

1 inside the city limits;

2 (3) submit the final *written* project plan to the county commission of  
3 each county where a portion of the trail is to be located outside of city  
4 limits and make subsequent reports to such county commission as to the  
5 status of trail development or operation, or both, at intervals determined by  
6 the commission and consider all recommendations the commission has  
7 regarding the trail; and

8 (4) submit the final *written* project plan to the governing body of each  
9 city where a portion of the trail is to be located inside the city limits and  
10 make subsequent reports to such city governing body as to the status of  
11 trail development or operation, or both, at intervals determined by the  
12 governing body and consider all recommendations the governing body has  
13 regarding the trail.

14 (c) *The provisions of this subsection shall only apply to recreational*  
15 *trails for which approval to enter into negotiations for interim trail use is*  
16 *received from the appropriate federal agency on or after July 1, 2017.*  
17 *Before commencing development or operation of a recreational trail, in*  
18 *addition to the requirements listed in subsection (b), the responsible party*  
19 *shall:*

20 (1) *Include provisions in the written project plan required under*  
21 *subsection (b) to address compliance issues with the Americans with*  
22 *disabilities act, as amended by the ADA amendments act of 2008,*  
23 *including an itemized estimate of the costs associated with compliance;*

24 (2) *check the intact integrity of the entire length of the rail corridor,*  
25 *report any obstruction or break in the corridor to the attorney general and*  
26 *the federal surface transportation board and, if the rail corridor is broken*  
27 *into non-contiguous pieces, receive written approval from the attorney*  
28 *general before commencing development or operation of any recreational*  
29 *trail on the rail corridor;*

30 (3) *obtain proper easements or fee simple ownership for the entire*  
31 *length of the recreational trail and the rail corridor, provide*  
32 *documentation to the attorney general for confirmation of compliance and*  
33 *receive written confirmation of compliance from the attorney general; and*

34 (4) *obtain an agreement with any adjacent property owner to use or*  
35 *inhabit any personal property owned by such property owner that is sitting*  
36 *on the rail corridor or hanging over the rail corridor, or complete the*  
37 *removal or confiscation of such property with due process provided to the*  
38 *property owner, provide documentation to the attorney general for*  
39 *confirmation of compliance and receive written confirmation of*  
40 *compliance from the attorney general.*

41 (d) *The requirements of this subsection shall be met before any*  
42 *responsible party applies for or spends any federal grant funds or other*  
43 *grant funds of any kind for the purpose of development or operation of a*

1 recreational trail. The responsible party shall:

2 (1) Check the intact integrity of the entire length of the rail corridor,  
3 report any obstruction or break in the corridor to the attorney general and  
4 the federal surface transportation board and, if the rail corridor is broken  
5 into non-contiguous pieces, receive written approval from the attorney  
6 general before applying for or spending any grant funds for the purpose of  
7 development or operation of a recreational trail;

8 (2) obtain proper easements or fee simple ownership for the entire  
9 length of the recreational trail and the rail corridor; provide  
10 documentation to the attorney general for confirmation of compliance and  
11 receive written confirmation of compliance from the attorney general; and

12 (3) obtain an agreement with any adjacent property owner to use or  
13 inhabit any personal property owned by such property owner that is sitting  
14 on the rail corridor or hanging over the rail corridor; or complete the  
15 removal or confiscation of such property with due process provided to the  
16 property owner; provide documentation to the attorney general for  
17 confirmation of compliance and receive written confirmation of  
18 compliance from the attorney general.

19 (e) The responsible party shall complete development of a  
20 recreational trail within a period of time equal to two years times the  
21 number of counties in which the recreational trail is located. Such period  
22 of time shall begin only when the appeal period pursuant to ~~subsection (d)~~  
23 ~~of 16 U.S.C. 1247(d) (1983)~~ has expired. Any time during which there is  
24 pending any court action or investigation by the attorney general  
25 challenging the development or use of the trail shall not be computed as  
26 part of the time limitation imposed by this subsection.

27 ~~(d) The provisions of this section shall apply to only recreational~~  
28 ~~trails for which approval to enter into negotiations for interim trail use is~~  
29 ~~received from the appropriate federal agency on or after the effective date~~  
30 ~~of this act~~

31 (f) When a responsible party has a certificate of interim trail use  
32 (CITU) or a notice of interim trail use (NITU), as issued by the federal  
33 surface transportation board, vacated or is otherwise required to  
34 relinquish a CITU or NITU, the responsible party shall post signs that the  
35 recreational trail is temporarily closed. If no other party is granted a  
36 CITU or NITU within 180 days after such occurrence, the responsible  
37 party shall, within 60 days, remove all signage along the entire length of  
38 the trail and the rail corridor, and shall remove any property owned by  
39 such party, including, but not limited to, litter containers and portable  
40 toilets, at such party's expense. If the responsible party fails to remove all  
41 property as required by this subsection and the state or any political  
42 subdivision thereof pays for such removal, the responsible party shall be  
43 required to reimburse the state or political subdivision.

1       Sec. 5. K.S.A. 2017 Supp. 58-3214 is hereby amended to read as  
2 follows: 58-3214. An adjacent property owner has no duty of care to: (a)  
3 Any person using a recreational trail, except that this subsection shall not  
4 relieve an adjacent property owner from liability for injury to another that  
5 is a direct result of such property owner's gross negligence or willful or  
6 wanton misconduct; or (b) any person entering such adjacent property  
7 owner's land by way of the recreational trail *or rail corridor* without  
8 implied or expressed permission or consent of the adjacent property owner,  
9 except that this subsection shall not relieve an adjacent property owner  
10 from liability for injury to another that is a direct result of an intentional or  
11 unlawful act of the adjacent property owner.

12       Sec. 6. K.S.A. 2017 Supp. 58-3215 is hereby amended to read as  
13 follows: 58-3215. *(a)(1) If the responsible party fails to comply with the*  
14 *provisions of ~~this the Kansas recreational trails act~~, any adjacent property*  
15 *owner, city or county aggrieved by the noncompliance of the following*  
16 *parties may bring an action in the district court to enforce the provisions of*  
17 *~~this act the act~~:*

18       *(A) The attorney general;*

19       *(B) any adjacent property owner aggrieved by the noncompliance; or*

20       *(C) any city or county aggrieved by the noncompliance.*

21       *(2) Upon a finding that the responsible party has failed to comply*  
22 *with the provisions of ~~this the act~~, the court may enter an order requiring*  
23 *the responsible party to comply with the provisions of ~~this act the act~~, and*  
24 *any other appropriate order.*

25       *(b) (1) Any person or entity may file a complaint with the attorney*  
26 *general alleging that a responsible party has failed to comply with the*  
27 *provisions of the Kansas recreational trails act. The attorney general may*  
28 *investigate the claim and may require submission of proof of compliance.*  
29 *The attorney general may order the responsible party to cease any further*  
30 *trail development and cease any application for or spending of any federal*  
31 *grant funds or other grant funds of any kind during the investigation.*

32       *(2) The attorney general may determine by a preponderance of the*  
33 *evidence after an investigation that a responsible party has failed to*  
34 *comply with the provisions of the act and may issue a finding of violation*  
35 *to the responsible party. The attorney general may require submission of*  
36 *proof that requirements of any finding of violation have been satisfied. If*  
37 *the attorney general issues a finding of violation to the responsible party,*  
38 *the finding may contain findings of fact and conclusions of law and may*  
39 *require the responsible party to:*

40       *(A) Cease and desist from further violation;*

41       *(B) comply with the provisions of the act; and*

42       *(C) submit a written plan of action with anticipated start and*  
43 *completion dates.*



1       (3) *The attorney general may apply to the district court to enforce a*  
2 *finding of violation pursuant to subsection (b)(2). Prior to applying to the*  
3 *district court, the attorney general shall make a demand to the responsible*  
4 *party to comply with the finding of violation and afford reasonable*  
5 *opportunity for the responsible party to cure the violation. An enforcement*  
6 *action under this section may be filed in the district court of the county*  
7 *where the finding of violation is issued or is effective. The district court of*  
8 *any county shall have jurisdiction to enforce any finding of violation.*

9       (4) *If the district court finds the attorney general did not abuse the*  
10 *attorney general's discretion in entering into the finding of violation, the*  
11 *district court shall enter an order that:*

12       (A) *Enjoins the responsible party to comply with the finding of*  
13 *violation;*

14       (B) *requires the responsible party to pay the attorney general's court*  
15 *costs and costs incurred in investigating the violation; and*

16       (C) *provides for any other remedy that the court deems appropriate.*

17       (5) *Any finding of violation issued by the attorney general pursuant*  
18 *to subsection (b)(2) shall be served upon the responsible party:*

19       (A) *By certified mail, return receipt requested, to the last known*  
20 *place of business, residence or abode within or without this state; or*

21       (B) *in the manner provided in the code of civil procedure as if a*  
22 *petition had been filed.*

23       (6) *The attorney general shall maintain and make available for*  
24 *public inspection all findings of violation issued pursuant to subsection (b)*  
25 *(2).*

26       (c) *If the attorney general determines by a preponderance of the*  
27 *evidence after an investigation that the condition of a rail corridor is such*  
28 *that resumption of rail service is not grounded in reality, the attorney*  
29 *general shall notify the federal surface transportation board and may*  
30 *apply for abandonment of the rail corridor.*

31       (d) *Nothing in this section shall be construed to prevent a property*  
32 *owner from bringing an action for correction of violations of the act or an*  
33 *action for recovery of property rights, costs or damages.*

34       Sec. 7. K.S.A. 58-3211, 58-3212 and 58-3213 and K.S.A. 2017 Supp.  
35 58-3214 and 58-3215 are hereby repealed.

36       Sec. 8. This act shall take effect and be in force from and after its  
37 publication in the statute book.