



GOVERNOR OF MISSOURI

JEFFERSON CITY

65102

May 2, 2011

JEREMIAH W. (JAY) NIXON
GOVERNOR

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TO THE CHIEF CLERK OF THE
HOUSE OF REPRESENTATIVES
96TH GENERAL ASSEMBLY
FIRST REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you Senate Substitute for Senate Committee Substitute for House Bill No. 209 entitled:

AN ACT

To repeal sections 67.402, 226.720, and 537.296, RSMo, and to enact in lieu thereof three new sections relating to nuisance actions, with penalty provisions.

I disapprove of Senate Substitute for Senate Committee Substitute for House Bill No. 209. My reasons for disapproval are as follows:

Senate Substitute for Senate Committee Substitute for House Bill No. 209 is flawed because certain of its provisions apply to nuisances not related to crop or animal production, and because it prohibits recovery of punitive damages in nuisance actions emanating from property used for crop or animal production.

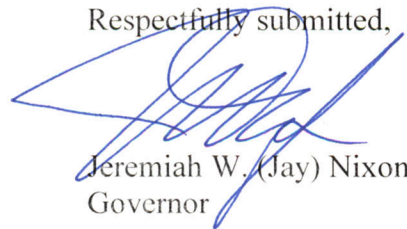
Senate Substitute for Senate Committee Substitute for House Bill No. 209 is overbroad because it goes beyond its purported intent of addressing only agricultural nuisances. Section 537.296.3 of Senate Substitute for Senate Committee Substitute for House Bill No. 209 converts a second temporary nuisance claim to a claim for permanent nuisance, but importantly, does not contain language limiting its application to nuisances emanating from crop or animal production. By contrast, the exclusive damages provision of Senate Substitute for Senate Committee Substitute for House Bill No. 209 and the "good faith" abatement provision of Senate Substitute for Senate Committee Substitute for House Bill No. 209 are expressly limited to "crop or animal production." By its own terms, therefore, the two lawsuit limitation in Section 537.296.3 applies to all types of nuisances and not just those relating to crop or animal production. Application of this provision beyond the purported intent of the bill, and the unintended consequences of this application, necessitates my disapproval.

Similarly, Section 537.296.5 of Senate Substitute for Senate Committee Substitute for House Bill No. 209 makes substantive changes to standing requirements, but again does not contain language limiting it to nuisances emanating from crop or animal production. The omission of language limiting this provision to crop or animal production has the presumably unintended effect of making all manner of nuisances – those involving blasting, vehicle exhaust, noise, dust, or leaking gas tanks or oil lines, to name just a few – subject to the standing provision of this bill and making changes to nuisance law not contemplated by either the proponents or opponents of Senate Substitute for Senate Committee Substitute for House Bill No. 209.

Finally, Senate Substitute for Senate Committee Substitute for House Bill No. 209 unacceptably prohibits punitive damages in a nuisance action arising out of crop or animal production. Under Missouri law, punitive damages are recoverable in a temporary nuisance action, i.e., where the nuisance is capable of abatement, and in a permanent nuisance action, i.e., where the nuisance cannot be abated. These damages are currently recoverable for agricultural and non-agricultural nuisances. Section 537.296.2 of Senate Substitute for Senate Committee Substitute for House Bill No. 209 changes Missouri law to provide that the “exclusive damages” awardable in temporary and permanent nuisance actions emanating from crop or animal production are the reduction in fair rental value or fair market value, plus compensatory damages arising from a medical condition caused by the nuisance. This exclusivity provision does not contain an exception for punitive damages. On its face, therefore, Senate Substitute for Senate Committee Substitute for House Bill No. 209 turns back decades of Missouri common law by prohibiting the recovery of punitive damages in an agricultural nuisance action. The recovery of punitive damages is an important tool to incent the abatement of noxious activity, and must continue to be available to persons aggrieved by a nuisance arising out of crop or animal production.

In accordance with the above stated reasons for disapproval, I am returning Senate Substitute for Senate Committee Substitute for House Bill No. 209 without my approval.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Jay Nixon', is written over the typed name and title.

Jeremiah W. (Jay) Nixon
Governor