



GOVERNOR OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
GOVERNOR

P.O. Box 720
(573) 751-3222

April 29, 2011

TO THE SECRETARY OF THE SENATE
96TH GENERAL ASSEMBLY
FIRST REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you Senate Committee Substitute for Senate Bill No. 188 entitled:

AN ACT

To repeal sections 213.010, 213.070, 213.101, and 213.111, RSMo, and to enact in lieu thereof five new sections relating to unlawful discriminatory practices.

I disapprove of Senate Committee Substitute for Senate Bill No. 188. My reasons for disapproval are as follows:

The Missouri Human Rights Act provides fundamental protections for individual citizens against discrimination in employment, housing and use of public accommodations. The Act implements the basic belief of Missourians that unfair treatment based on race, color, religion, national origin, sex, ancestry, age, disability or familial status shall not be tolerated and the citizens who have been subjected to such unfair treatment must have a meaningful opportunity to protect their basic civil rights.

Senate Committee Substitute for Senate Bill No. 188 represents a significant retreat from the basic principles of fairness embodied in the Missouri Human Rights Act and erects unacceptable impediments to those victimized by discrimination and seeking to avail themselves of the Act's legal protection. Senate Committee Substitute for Senate Bill No. 188 is characterized by an overarching lack of accountability for discriminatory conduct. Missouri has made important progress, over decades, in insisting its workplaces, public accommodations and housing opportunities are free from discrimination. Senate Committee Substitute for Senate Bill No. 188 would roll back that progress and enfeeble the protections that should, and must, be afforded to Missourians.

Senate Committee Substitute for Senate Bill No. 188 contains provisions that I deem bad public policy and an unacceptable step backward from the protections of the Missouri Human Rights Act, including but not limited to the following:

- **Eliminating individual responsibility for discrimination.** Senate Committee Substitute for Senate Bill No. 188 releases from liability the person who committed the allegedly discriminatory act. For example, a supervisor who fired an employee because of the employee's race; who sexually harassed an employee; or who demoted an employee because of the employee's age could not be held liable under the Missouri Human Rights Act if Senate Committee Substitute for Senate Bill No. 188 became law. That is not acceptable in the State of Missouri. A victimized employee should have the opportunity to hold the victimizer accountable in a court of law.
- **Exempting private clubs from suit.** Under Senate Committee Substitute for Senate Bill No. 188, private clubs that discriminate against their employees could not be sued under the Missouri Human Rights Act. Excusing discrimination based simply on where it occurred is an abhorrent policy, and even more so given the history surrounding these clubs. Discrimination must not be tolerated in any setting.
- **Limiting actual damages.** Senate Committee Substitute for Senate Bill No. 188 establishes compensatory damage caps that are inadequate for persons that have suffered discrimination on the basis of their race, color, religion, national origin, sex, ancestry, age, disability or familial status. Moreover, Senate Committee Substitute for Senate Bill No. 188 limits actual damages in ways that are more restrictive than federal law. Senate Committee Substitute for Senate Bill No. 188 caps back pay by expressly including it in the damages cap, and Senate Committee Substitute for Senate Bill No. 188 caps front pay, which is a type of equitable relief, through use of the phrase "other equitable relief" in the damages limitation provision. These limitations will reduce the recovery available to victims of discrimination and have a chilling effect on the ability of those persons to bring legal action under the Missouri Human Rights Act.
- **Limiting punitive damages against private companies and prohibiting punitive damages against government.** Senate Committee Substitute for Senate Bill No. 188 limits the amount of punitive damages a person can recover by including punitive damages in the overall damages cap, and Senate Committee Substitute for Senate Bill No. 188 also bars punitive damages against the State or political subdivisions. Enactment of these provisions into law would unfairly and wrongly diminish the accountability of a wrongdoer who discriminates with evil motive or reckless indifference. Furthermore, by prohibiting punitive damages against government, Senate Committee Substitute for Senate Bill No. 188 would have the unfortunate effect of making government less accountable for discriminatory conduct than the private sector. Neither proposition is

tenable. Missourians deserve, and the Missouri Human Rights Act should provide, appropriate accountability for such egregious conduct.

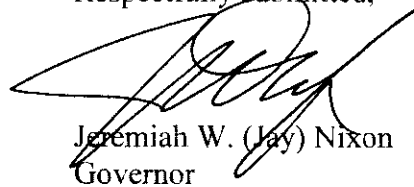
- **Limiting the right to a jury trial.** Senate Committee Substitute for Senate Bill No. 188 would limit the right to a jury trial under the Missouri Human Rights Act by instructing Missouri judges to dismiss more employment discrimination cases through summary judgment. Given the significant progress in establishing the right to jury trial under the Missouri Human Rights Act, and considering the fact-intensive nature of these types of cases, it would be a step backward to limit the right to jury trial by statutorily instructing judges to increase the use of summary judgment. It should also be noted that directing Missouri courts to find certain federal judicial decisions and their “progeny” “highly persuasive” is a confusing and misdirected relinquishment of state authority. “Progeny” does not typically include statutory changes. Even if it does, it is unclear whether Senate Committee Substitute for Senate Bill No. 188 directs Missouri courts to look to potential future amendments to the 1991 Civil Rights Act. “Progeny” would also seemingly require Missouri courts to reconcile the myriad of sometimes conflicting judicial decisions handed down by federal district and appellate courts in analyzing a Missouri employment discrimination case. Neither approach would promote judicial efficiency or clarity. Missouri courts should first and foremost look to Missouri law when evaluating a Missouri employment discrimination case.
- **Making Missouri law more restrictive than federal law.** Senate Committee Substitute for Senate Bill No. 188 is more restrictive than federal law in important respects. Unlike federal law, Senate Committee Substitute for Senate Bill No. 188 caps damages for back pay and front pay. Unlike federal law, Senate Committee Substitute for Senate Bill No. 188 prohibits punitive damages against government in housing discrimination claims and prohibits liquidated damages against local government (the equivalent of punitive damages) in age discrimination claims. Unlike federal law, the amount of punitive damages that a plaintiff can recover under Senate Committee Substitute for Senate Bill No. 188 is less than federal law, because a back pay award under Senate Committee Substitute for Senate Bill No. 188 would count toward the damages cap that encompasses punitive damages. And, unlike federal law, Senate Committee Substitute for Senate Bill No. 188 prohibits certain types of relief that are recoverable in an employment discrimination action if one assumes that Senate Committee Substitute for Senate Bill No. 188 establishes a “but for” standard of causation.
- **Jeopardizing federal funding for the Missouri Human Rights Commission.** The Missouri Human Rights Commission enters into work sharing agreements with the federal Equal Employment Opportunity Commission (EEOC) to enforce federal anti-discrimination laws and with the federal Department of Housing and Urban Development

(HUD) to enforce the federal Fair Housing Act. Both federal agencies provide funding to the Missouri Human Rights Commission under these agreements. Both the EEOC and HUD have concluded that contracting and funding for enforcement of federal anti-discrimination laws might be jeopardized if the provisions of Senate Committee Substitute for Senate Bill No. 188 that are more restrictive than federal statutes become law. That is a risk that should not be taken. The Missouri Human Rights Commission performs important functions that should not be endangered.

- **Exempting seasonal employers.** Senate Committee Substitute for Senate Bill No. 188 limits liability to those employers that employ persons for each working day for twenty or more calendar weeks in the current or preceding calendar year, which will have the effect of preventing seasonal employers from being accountable for discrimination. Excluding a class of employers solely on this basis would impede the goals of the Missouri Human Rights Act.

In accordance with the above stated reasons for disapproval, I am returning Senate Committee Substitute for Senate Bill No. 188 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon
Governor