

SECOND REGULAR SESSION

HOUSE BILL NO. 2421

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAIN.

5263H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 115, RSMo, by adding thereto four new sections relating to elections, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 115, RSMo, is amended by adding thereto four new sections, to be known as sections 115.1060, 115.1065, 115.1070, and 115.1075, to read as follows:

115.1060. 1. As used in this section, the following terms shall mean:

(1) "Federal voting rights act", the federal Voting Rights Act of 1965, 52 U.S.C. Section 10301, as amended;

(2) "Protected class", a class of eligible voters who are members of a race, ethnicity, or language-minority group;

(3) "Racially polarized voting", voting in which there is a difference in the candidate or electoral choice preferred by a protected class and the candidate or electoral choice preferred by the rest of the electorate.

2. No voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy shall be enacted or implemented by any local election authority in a manner that results in a denial or abridgment of the right of any member of a protected class to vote.

(1) A violation of this subsection shall be established if, based on the totality of the circumstances, members of a protected class have less opportunity than other members of the electorate to participate in the political process or elect candidates or electoral choices preferred by members of the protected class;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (2) If assessing a potential violation of this section, the court may consider, but is
18 not limited to considering, the extent to which members of a protected class have been
19 elected to office in the state or political subdivision and the extent to which members of a
20 protected class in the state or political subdivision vote at lower rates than other members
21 of the electorate;

22 (3) There shall be a presumption of denial or abridgment of the right to vote if a
23 political subdivision election is held on a date that is not concurrent with the primary or
24 general election dates for the state or county and where, for three consecutive general
25 elections in which there is at least one contested race for an office, the number of actual
26 voters in each contested election is less than twenty-five percent of the total number of
27 votes cast in the most recent general election for President of the United States by voters
28 in the political subdivision, or in which, for any protected class consisting of at least
29 twenty-five thousand citizens of voting age or whose members comprise at least ten percent
30 of the citizen voting age population, the percent of members of that protected class who are
31 actual voters is at least twenty-five percent lower than the percent of citizens of voting age
32 who are not members of that protected class who are actual voters.

33 3. Any method of election or voting used in this state shall not have the effect of
34 impairing the ability of members of a protected class to elect candidates of their choice or
35 influence the outcome of elections as a result of the dilution or the abridgment of the rights
36 of members of the protected class.

37 (1) A violation of this subsection shall be:

38 (a) Established if it is shown that candidates or electoral choices preferred by
39 members of the protected class would usually be defeated and either the voting patterns
40 of members of the protected class within the political subdivision are racially polarized or,
41 under the totality of the circumstances, the ability of members of the protected class to elect
42 candidates of their choice or influence the election is impaired; and

43 (b) Presumptively established if it is shown that the political subdivision used race,
44 ethnicity, or language-minority group or another characteristic that serves as a proxy for
45 race, ethnicity, or language-minority group, for the purpose of apportionment. A political
46 subdivision shall only rebut this presumption by showing that race, ethnicity, language-
47 minority, or other characteristic was used to the extent necessary to comply with this
48 section, the federal voting rights act, or the Constitution of the United States.

49 (2) In assessing whether voting patterns of members of the protected class within
50 the political subdivision are racially polarized or electoral choices preferred by members
51 of the protected class would usually be defeated:

- 52 (a) Elections conducted prior to the filing of an action under this subsection shall
53 be more probative than elections conducted after the filing of the action;
- 54 (b) Evidence concerning elections for members of the governing body of the
55 political subdivision shall be more probative than evidence concerning other elections;
- 56 (c) Statistical evidence shall be more probative than non-statistical evidence;
- 57 (d) If there is evidence that more than one protected class of eligible voters are
58 politically cohesive in the political subdivision, members of each of those protected classes
59 may be combined;
- 60 (e) Evidence concerning the intent on the part of the voters, elected officials, or the
61 political subdivision to discriminate against a protected class shall not be required;
- 62 (f) Evidence that voting patterns and election outcomes could be explained by
63 factors other than racially polarized voting including, but not limited to, partisanship, shall
64 not be considered;
- 65 (g) Evidence that subgroups within a protected class have different voting patterns
66 shall not be considered;
- 67 (h) Evidence concerning whether members of a protected class are geographically
68 compact or concentrated shall not be considered, but may be a factor in determining an
69 appropriate remedy; and
- 70 (i) Evidence concerning projected changes in population or demographics shall not
71 be considered, but may be a factor in determining an appropriate remedy.
- 72 (3) In assessing whether, under the totality of the circumstances, the ability of
73 members of the protected class to elect candidates of their choice or influence the outcome
74 of elections is impaired, factors that may be considered shall include, but not be limited to:
- 75 (a) The history of discrimination in the political subdivision, geographic region, or
76 the state;
- 77 (b) The extent to which members of the protected class have been elected to office
78 in the political subdivision;
- 79 (c) The use of any voting qualification, prerequisite to voting, law, ordinance,
80 standard, practice, procedure, regulation, or policy that may enhance the dilutive effects
81 of the election scheme;
- 82 (d) Denial of access for eligible voters or candidates who are members of the
83 protected class to those processes determining which groups of candidates will receive
84 access to the ballot, financial support, or other support in a given election;
- 85 (e) The extent to which members of the protected class contribute to political
86 campaigns at lower rates;

(f) The extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate;

(g) The extent to which members of the protected class are disadvantaged in other areas that may hinder their ability to participate effectively in the political process;

(h) The use of overt or subtle racial appeals in political campaigns;

(i) A significant lack of responsiveness on the part of elected officials to the particular needs of members of the protected class; and

(j) Whether the political subdivision has a compelling policy justification for adopting or maintaining the method of election.

None of the factors in paragraphs (a) to (j) of this subdivision shall be dispositive or necessary to establish the existence of racially polarized voting. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.

4. Any aggrieved person, organization whose membership includes or is likely to include aggrieved persons, organization whose mission would be frustrated by a violation of this section, organization that would expend resources in order to fulfill its mission as a result of a violation of this section, or the attorney general may file an action under this section in the circuit court of the county in which the political subdivision is located.

5. (1) Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies that are tailored to remedy the violation. Remedies may include, but shall not be limited to:

(a) An alternative method of election;

(b) New or revised apportionment plans;

(c) Eliminating staggered elections so that all members of the governing body are elected on the same date;

(d) Increasing the size of the governing body;

(e) Moving the dates of the elections to be concurrent with the primary or general election dates for state, county, or city offices as established by law;

(f) Additional voting hours or days;

(g) Additional polling locations;

(h) Additional means of voting, such as voting by mail;

(i) Ordering of special elections;

(j) Expanded opportunities for voter registration;

(k) Additional voter education;

123 (l) Modifying the election calendar; or

124 (m) The restoration of addition of persons to registration lists.

125 (2) The court shall only adopt a remedy that does not diminish the ability of
126 minority groups to participate in the political process and elect their preferred candidates
127 to office. The court shall consider proposed remedies by any parties and interested non-
128 parties, and shall not provide deference or priority to a proposed remedy because it is
129 proposed by the political subdivision. The court may implement remedies notwithstanding
130 any other provision of law.

115.1065. 1. The secretary of state shall establish a repository of the data necessary
2 to assist the state and all political subdivisions with evaluating whether and to what extent
3 existing laws and practice with respect to voting and elections are consistent with public
4 policy, implementing best practices in voting and elections to achieve the purposes of this
5 chapter, and investigating potential infringements upon the right to vote.

6 2. The statewide database shall maintain in electronic format at least the following
7 data and records for at least the previous twelve-year period:

8 (1) Estimates of the total population, voting age population, and citizen voting age
9 population by race, ethnicity, and language-minority group, broken down to the local
10 election authority level on a year-by-year basis for every political subdivision in the state,
11 based on data from the United States Census Bureau, American Community Survey, or
12 data of comparable quality collected by a public office;

13 (2) Election results at the local election authority level for every statewide election
14 and every election in every political subdivision;

15 (3) Contemporaneous voter registration lists, voter history files, election day poll
16 site locations, and early voting site locations, for every election in every political
17 subdivision;

18 (4) Contemporaneous maps, descriptions of boundaries, and shapes of election
19 districts;

20 (5) Election day or early voting poll sites including, but not limited to, lists of
21 election districts assigned to each polling place, if applicable;

22 (6) Apportionment plans for every election in every political subdivision; and

23 (7) Any other data that the secretary of state deems advisable to maintain in
24 furtherance of the purposes of this section.

25 3. Except for any data, information, or estimates that identify individual voters, all
26 data, information, and estimates maintained in the statewide database shall be available
27 on the secretary of state's website and freely accessible by the public.

28 4. The statewide database shall prepare any estimates made under this section by
29 applying the most advanced, peer-reviewed, and validated methodologies.

30 5. The secretary of state shall use the statewide database to determine which local
31 election authorities shall be required to provide assistance to language-minority groups as
32 provided in section 115.1070 and shall update the list of which local election authorities are
33 required to provide assistance and in which languages beginning January 1, 2021, and
34 every three years thereafter.

35 6. Local election authorities shall comply with any requests for information from
36 the secretary of state to assist in compiling the information required by subsection 2 of this
37 section.

 115.1070. 1. Local election authorities shall be required to provide language-
2 related assistance in voting and elections to a language-minority group within the political
3 subdivision if the secretary of state determines, based on data from the American
4 Community Survey taken by the United States Census Bureau or the statewide database
5 established in section 115.1065, that:

6 (1) More than two percent of the citizens of voting age of a political subdivision are
7 members of a single language-minority group and speak English "less than very well" as
8 indicated on the American Community Survey; or

9 (2) More than four thousand of the citizens of voting age of the political subdivision
10 are members of a single language-minority group and speak English "less than very well"
11 according to the American Community Survey.

12 2. If local election authorities are required to provide language assistance to a
13 language-minority group under subsection 5 of section 115.1065, the election authority
14 shall do so by providing registration or voting notices, forms, instructions, assistance, or
15 other materials or information relating to the electoral process, including ballots, in the
16 language of the applicable minority group as well as in the English language.

17 3. A local election authority who fails to provide materials in the language of the
18 language-minority group as described in subsection 2 of this section shall be subject to an
19 injunction in the circuit court with jurisdiction over the local election authority, ordering
20 them to provide the required materials.

 115.1075. 1. To ensure that the right to vote is not denied or abridged on account
2 of race, ethnicity, or language-minority, any covered policy as defined in subsection 2 of
3 this section proposed by a covered entity as defined in subsection 3 of this section shall be
4 subject to preclearance by the office of the attorney general.

5 2. A "covered policy" shall include any new or modified voting qualification,
6 prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy
7 concerning any of the following:

- 8 (1) Apportionment;
- 9 (2) Method of election;
- 10 (3) Form of government;
- 11 (4) Annexation of a political subdivision;
- 12 (5) Incorporation of a political subdivision;
- 13 (6) Consolidation or division of political subdivisions;
- 14 (7) Removal of voters from enrollment lists or other voter list maintenance
15 activities;
- 16 (8) Number, location, or hours of any election day or early voting poll sites;
- 17 (9) Dates of elections and the election calendar, except with respect to special
18 elections;
- 19 (10) Registration of voters;
- 20 (11) Assignment of election districts to election day or early voting poll sites;
- 21 (12) Assistance offered to members of a language-minority group;
- 22 (13) Changes to governmental powers of elected officials; and
- 23 (14) Any other new or modified voting qualification, prerequisite to voting, law,
24 ordinance, standard, practice, procedure, regulation, or policy concerning such topics that
25 may have the effect of denying or abridging the right to vote on account of race, ethnicity,
26 or language-minority group.

27 3. A "covered entity" shall include:

28 (1) Any political subdivision that, within the previous twenty-five years, has become
29 subject to a court order or government enforcement action based upon a finding of any
30 violation of this chapter, the federal voting rights act, the fifteenth amendment to the
31 Constitution of the United States, or a voting-related violation of the fourteenth
32 amendment to the Constitution of the United States;

33 (2) Any political subdivision that, within the previous twenty-five years, has failed
34 to comply with its obligations to provide data or information to the secretary of state for
35 the statewide database created in section 115.1065;

36 (3) Any political subdivision that, within the previous twenty-five years, has become
37 subject to at least three court orders or government enforcement actions based upon a
38 finding of any violation of any state or federal civil rights law or the fourteenth amendment
39 to the Constitution of the United States concerning discrimination against members of a
40 protected class;

(4) Any county in which, based on data provided by the department of corrections, the combined misdemeanor and felony arrest rate of members of any protected class consisting of at least ten thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the county exceeds that of the citizen voting age population of the county as a whole by at least twenty percent at any point within the previous ten years; or

(5) Any political subdivision in which, based on data made available by the United States Census Bureau, the dissimilarity index of any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the political subdivision is in excess of fifty with respect to non-Hispanic white citizens of voting age within the political subdivision within the previous ten years.

4. A covered entity may obtain preclearance for a covered policy from the office of the attorney general in the following manner:

(1) The covered entity shall submit the covered policy in writing to the office of the attorney general.

(2) The office of the attorney general shall grant or deny preclearance according to the following time limitations:

(a) For any covered policy concerning the designation of poll sites or the assignment of election districts to poll sites, the office of the attorney general shall grant or deny preclearance within thirty days following the receipt of the covered policy. If preclearance is granted, the office of the attorney general may designate the preclearance as "preliminary" for a period of sixty days, at which time the office of the attorney general may finally grant or deny the covered policy;

(b) For any covered policy concerning the establishment of a district-based or alternative method of election, apportionment plans, or a change to the form of government of a political subdivision, the office of the attorney general shall grant or deny preclearance within sixty days, but may invoke up to two extensions of ninety days; and

(c) For any other covered policy, the office of the attorney general shall grant or deny preclearance within sixty days following the receipt of the covered policy.

(3) The office of the attorney general shall grant preclearance only if it determines that the covered policy will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office. If preclearance is granted, the covered entity may enact or implement the covered policy immediately.

(4) If the office of the attorney general denies preclearance, the denial shall be accompanied with a list of objections to the covered policy.

77 (5) If the office of the attorney general fails to respond within the time limits in
78 subdivision (2) of this subsection, the covered policy shall be deemed precleared and the
79 covered entity may enact or implement the covered policy.

80 (6) Appeal of a denial of preclearance may be heard in the Cole County circuit
81 court. Due to the frequency and urgency of elections, actions brought under this section
82 shall be subject to expedited pretrial and trial proceedings and receive calendaring
83 preference on appeal.

84 (7) The office of the attorney general may promulgate rules to assist in the
85 implementation of this section. Any rule or portion of a rule, as that term is defined in
86 section 536.010, that is created under the authority delegated in this section shall become
87 effective only if it complies with and is subject to all of the provisions of chapter 536 and,
88 if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any
89 of the powers vested with the general assembly pursuant to chapter 536 to review, to delay
90 the effective date, or to disapprove and annul a rule are subsequently held
91 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
92 after August 28, 2020, shall be invalid and void.

93 5. If any covered entity enacts or implements a covered policy without seeking
94 preclearance from the office of the attorney general or enacts or implements a covered
95 policy after such policy is denied preclearance by the office of the attorney general, the
96 attorney general or any voter affected by the covered policy may bring an action to enjoin
97 the covered policy and seek civil penalties against the political subdivision and officials in
98 violation.

✓