

FIRST REGULAR SESSION

# HOUSE BILL NO. 1256

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE AUNE.

2478H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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*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 percentage of members of that protected class who  
31 are actual voters is at least twenty-five percent lower than the percentage of citizens of  
32 voting age 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 group, or another characteristic was used only to the extent necessary to comply  
48 with this 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 nonstatistical 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;

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

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

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

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

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

96

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

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

107 5. (1) Upon a finding of a violation of any provision of this section, the court shall  
108 implement appropriate remedies that are tailored to remedy the violation. Remedies may  
109 include, but shall not be limited to:

110 (a) An alternative method of election;

111 (b) New or revised apportionment plans;

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

114 (d) Increasing the size of the governing body;

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

117 (f) Additional voting hours or days;

118 (g) Additional polling locations;

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

120 (i) Ordering of special elections;

121 (j) Expanded opportunities for voter registration;

122 (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**  
128 **nonparties 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, 2022, 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 **the local election authority 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**  
39 **Amendment to the Constitution of the United States concerning discrimination against**  
40 **members of a protected class;**

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

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

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

55           **(1) The covered entity shall submit the covered policy in writing to the office of the**  
56 **attorney general;**

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

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

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

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

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

75           **(4) If the office of the attorney general denies preclearance, the denial shall be**  
76 **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, 2021, 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.**

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