

STATE OF NEW YORK

9687

IN SENATE

May 21, 2024

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to voting rights; to amend chapter 226 of the laws of 2022 amending the election law relating to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation, in relation to making technical changes; and to repeal certain provisions of the election law relating to voting rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5 of section 17-204 of the election law, as
2 added by chapter 226 of the laws of 2022, is amended to read as follows:
3 5. "Protected class" means a class of [~~eligible voters~~] individuals
4 who are members of a race, color, or language-minority group, including
5 individuals who are members of a minimum reporting category that has
6 ever been officially recognized by the United States census bureau.
7 § 2. Subdivision 10 of section 17-204 of the election law is REPEALED.
8 § 3. Subparagraph (ii) of paragraph (b) of subdivision 2 of section
9 17-206 of the election law, as added by chapter 226 of the laws of 2022,
10 is amended to read as follows:
11 (ii) used a district-based or alternative method of election and that
12 candidates or electoral choices preferred by members of the protected
13 class would usually be defeated, and either: (A) voting patterns of
14 members of the protected class within the political subdivision are
15 racially polarized; or (B) under the totality of the circumstances, the
16 ability of members of the protected class to elect candidates of their
17 choice or influence the outcome of elections is impaired[~~to~~].
18 § 4. The opening paragraph of subdivision 7 of section 17-206 of the
19 election law, as added by chapter 226 of the laws of 2022, is amended to
20 read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 Notification requirement and safe harbor for judicial actions. Before
2 commencing a judicial action against a political subdivision under this
3 section, a prospective plaintiff shall send by certified mail a written
4 notice to the clerk of the political subdivision, or, if the political
5 subdivision does not have a clerk, the governing body of the political
6 subdivision, against which the action would be brought, asserting that
7 the political subdivision may be in violation of this title. This writ-
8 ten notice shall be referred to as a "NYVRA notification letter" in this
9 title. The NYVRA notification letter shall specify the potential
10 violation or violations alleged and shall contain a statement of facts
11 to support such allegation; provided, however, that failure to so speci-
12 fy shall not be a basis for dismissal of such judicial action, but may
13 affect the calculation of reimbursement pursuant to paragraph (e) of
14 this subdivision. The prospective plaintiff shall also send by first
15 class mail or email a copy of the NYVRA notification letter to the civil
16 rights bureau. For actions against a school district or any other poli-
17 tical subdivision that holds elections governed by the education law,
18 the prospective plaintiff shall also send by certified mail a copy of
19 the NYVRA notification letter to the commissioner of education.

20 § 5. Paragraph (b) of subdivision 7 of section 17-206 of the election
21 law, as added by chapter 226 of the laws of 2022, is amended to read as
22 follows:

23 (b) Before receiving a NYVRA notification letter, or within fifty days
24 of mailing of a NYVRA notification letter, the governing body of a poli-
25 tical subdivision may pass a resolution affirming: (i) the political
26 subdivision's intention to enact and implement a remedy for a potential
27 violation of this title; (ii) specific steps the political subdivision
28 will undertake to facilitate approval and implementation of such a reme-
29 dy; and (iii) a schedule for enacting and implementing such a remedy.
30 Such a resolution shall be referred to as a "NYVRA resolution" in this
31 title. If a political subdivision passes a NYVRA resolution, such poli-
32 tical subdivision shall have ninety days after such passage to enact and
33 implement such remedy, during which a prospective plaintiff shall not
34 commence an action to enforce this section against the political subdivi-
35 sion. For actions against a school district, the commissioner of educa-
36 tion may order the enactment of a NYVRA resolution pursuant to the
37 commissioner's authority under section three hundred five of the educa-
38 tion law. Within seven days of passing a NYVRA resolution, the poli-
39 tical subdivision shall send by first class mail or email a copy of the
40 resolution to the civil rights bureau.

41 § 6. Subparagraph (i) of paragraph (c) of subdivision 7 of section
42 17-206 of the election law, as added by chapter 226 of the laws of 2022,
43 is amended to read as follows:

44 (i) The governing body of the political subdivision may approve a
45 proposed remedy that complies with this title and submit such a proposed
46 remedy to the civil rights bureau no later than one hundred twenty days
47 after the passage of the NYVRA resolution. Such a submission shall be
48 referred to as a "NYVRA proposal" in this title.

49 § 7. Subparagraph (iii) of paragraph (c) of subdivision 7 of section
50 17-206 of the election law, as added by chapter 226 of the laws of 2022,
51 is amended to read as follows:

52 (iii) Within [~~forty-five~~ sixty] days of receipt of a NYVRA proposal,
53 the civil rights bureau shall grant or deny approval of the NYVRA
54 proposal. The civil rights bureau may invoke an extension of up to twen-
55 ty days to review the proposal.

1 § 8. Subparagraph (iv) of paragraph (c) of subdivision 7 of section
2 17-206 of the election law, as added by chapter 226 of the laws of 2022,
3 is amended to read as follows:

4 (iv) The civil rights bureau shall only grant approval to the NYVRA
5 proposal if it concludes that: (A) the political subdivision may be in
6 violation of this title; (B) the NYVRA proposal would remedy any poten-
7 tial violation of this title cited in the NYVRA notification letter and
8 would not give rise to any other violation of this title; (C) the NYVRA
9 proposal is unlikely to violate the constitution or any relevant federal
10 law; and (D) [~~the NYVRA proposal would not diminish the ability of~~
11 ~~protected class members to participate in the political process and to~~
12 ~~elect their preferred candidates to office, and (E)] implementation of
13 the NYVRA proposal is feasible.~~

14 § 9. Subdivision 3 of section 17-210 of the election law, as added by
15 chapter 226 of the laws of 2022, is amended to read as follows:

16 3. Covered entity. A "covered entity" shall include: (a) any political
17 subdivision which, within the previous twenty-five years, has become
18 subject to a court order or government enforcement action based upon a
19 finding of any violation of this title, the federal voting rights act,
20 the fifteenth amendment to the United States constitution, or a voting-
21 related violation of the fourteenth amendment to the United States
22 constitution; (b) any political subdivision which, within the previous
23 twenty-five years, has become subject to at least three court orders or
24 government enforcement actions based upon a finding of any violation of
25 any state or federal civil rights law or the fourteenth amendment to the
26 United States constitution concerning discrimination against members of
27 a protected class; (c) any county in which, based on data provided by
28 the division of criminal justice services, the combined misdemeanor and
29 felony arrest rate of voting age members of any protected class consist-
30 ing of at least ten thousand citizens of voting age or whose members
31 comprise at least ten percent of the citizen voting age population of
32 the county, exceeds the proportion that the protected class constitutes
33 of the citizen voting age population of the county as a whole by at
34 least twenty [~~percent~~] percentage points at any point within the previ-
35 ous ten years; [~~or~~] (d) any political subdivision in which, based on
36 data made available by the United States census, the dissimilarity index
37 of any protected class consisting of at least twenty-five thousand citi-
38 zens of voting age or whose members comprise at least ten percent of the
39 citizen voting age population of the political subdivision, is in excess
40 of fifty with respect to non-Hispanic white [~~citizens of voting age~~]
41 individuals within the political subdivision at any point within the
42 previous ten years[~~, If any covered entity is a~~]; (e) any political
43 subdivision in which a board of elections has been established, [~~that~~
44 ~~board of elections shall also be deemed~~] if such political subdivision
45 contains a covered entity[~~, If~~] fully within its borders; or (f) any
46 [~~political subdivision in which a~~] board of elections that has been
47 established [~~contains a covered entity fully within its borders, that~~]
48 in a political subdivision [~~and that board of elections shall both be~~
49 ~~deemed~~] that is a covered entity pursuant to paragraph (a), (b), (c),
50 (d) or (e) of this subdivision.

51 § 10. Subparagraph (ii) of paragraph (f) of subdivision 4 of section
52 17-210 of the election law, as added by chapter 226 of the laws of 2022,
53 is amended to read as follows:

54 (ii) [~~Upon a showing of good cause, the~~] The civil rights bureau may
55 [~~receive~~] invoke an extension of up to twenty days to make a determi-

1 nation pursuant to this paragraph, if the civil rights bureau determines
2 that good cause exists for such extension.

3 § 11. Subdivision 7 of section 17-210 of the election law, as added by
4 chapter 226 of the laws of 2022, is amended to read as follows:

5 7. [~~Rules and regulations. The civil rights bureau may promulgate such~~
6 ~~rules and regulations as are necessary to effectuate the purposes of~~
7 ~~this section.~~] Notification. (a) Any political subdivision that becomes
8 subject to a court order or government enforcement action as provided in
9 paragraph (a) or (b) of subdivision three of this section shall notify
10 the civil rights bureau within thirty days of the issuance of such order
11 or enforcement action.

12 (b) Any political subdivision that becomes involved in litigation
13 concerning voting shall notify the civil rights bureau within thirty
14 days of the commencement of such litigation.

15 (c) No more than thirty days after publication of a list of covered
16 entities by the civil rights bureau, each covered entity included in
17 such list shall notify the civil rights bureau of the name, email
18 address, and telephone number of an individual with the authority to
19 submit covered policies for preclearance on behalf of the covered enti-
20 ty. Each such covered entity shall notify the civil rights bureau within
21 thirty days of any material change to the information required pursuant
22 to this paragraph.

23 § 12. Subparagraph (ii) of paragraph (b) of subdivision 1 of section
24 17-212 of the election law, as amended by chapter 481 of the laws of
25 2023, is amended to read as follows:

26 (ii) a person knowingly uses any deceptive or fraudulent device,
27 contrivance or communication~~[r]~~ that (A) pertains to: (1) the time,
28 place, or manner of any election; (2) the qualifications or restrictions
29 on voter eligibility for such election; (3) any voter's eligibility to
30 vote in any election; (4) the consequences for voting or failing to vote
31 in any election; or (5) a statement of endorsement by any specifically
32 named person, political party, or organization; and (B) impedes,
33 prevents or otherwise interferes with the free exercise of the elective
34 franchise by any person, or [~~that~~] causes or will reasonably have the
35 effect of causing any person to vote or refrain from voting in general
36 or for or against any particular person or for or against any proposi-
37 tion submitted to voters at such election; to place or refrain from
38 placing their name upon a registry of voters; or to request or refrain
39 from requesting an early mail or absentee ballot; or

40 § 13. Section 17-214 of the election law, as added by chapter 226 of
41 the laws of 2022, is amended to read as follows:

42 § 17-214. Enforcement. 1. Enforcement by the attorney general. If the
43 civil rights bureau concludes that a submission by a political subdivi-
44 sion or any other party is insufficient to complete its review, the
45 civil rights bureau may request that the party provide additional infor-
46 mation, and the time periods for review provided in this title shall
47 recommence upon receipt of such information. If such information is not
48 provided, such time periods for review shall not apply.

49 2. Authority to issue subpoenas. In any action or investigation to
50 enforce any provision of this title, the attorney general shall have the
51 authority to take proof and determine relevant facts and to issue
52 subpoenas in accordance with the civil practice law and rules.

53 3. Preclearance. Covered entities shall provide information relevant
54 to preclearance to the civil rights bureau upon request.

55 § 14. Section 17-216 of the election law, as added by chapter 226 of
56 the laws of 2022, is amended to read as follows:

1 § 17-216. Expedited judicial proceedings and preliminary relief.
2 Because of the frequency of elections, the severe consequences and irre-
3 parable harm of holding elections under unlawful conditions, and the
4 expenditure to defend potentially unlawful conditions that benefit
5 incumbent officials, actions brought pursuant to this title shall be
6 subject to expedited pretrial and trial proceedings and receive an auto-
7 matic calendar preference. In any action alleging a violation of this
8 ~~[section]~~ title in which a plaintiff party seeks preliminary relief with
9 respect to an upcoming election, the court shall grant relief if it
10 determines that: (a) plaintiffs are more likely than not to succeed on
11 the merits; and (b) it is possible to implement an appropriate remedy
12 that would resolve the alleged violation in the upcoming election.

13 § 15. The election law is amended by adding a new section 17-219 to
14 read as follows:

15 § 17-219. Rules and regulations. The civil rights bureau may promul-
16 gate such rules and regulations as may be necessary to effectuate the
17 purposes of this title.

18 § 16. Section 5 of chapter 226 of the laws of 2022 amending the
19 election law relating to establishing the John R. Lewis Voting Rights
20 Act of New York, establishing rights of action for denying or abridging
21 of the right of any member of a protected class to vote, providing
22 assistance to language-minority groups, requiring certain political
23 subdivisions to receive preclearance for potential violations of the
24 NYVRA, and creating civil liability for voter intimidation, as amended
25 by chapter 169 of the laws of 2023, is amended to read as follows:

26 § 5. This act shall take effect July 1, 2023; provided that section
27 17-208 of the election law as added by section four of this act shall
28 take effect three years after it shall have become a law; and provided
29 further, however, that section 17-210 of the election law, as added by
30 section four of this act, shall take effect one year after the attorney
31 general certifies that the office of the attorney general is prepared to
32 execute the duties assigned in section four of this act, and further
33 provided that if after the expiration of one year following such certifi-
34 cation the attorney general requires more time to [~~certify that the~~
35 ~~office of the attorney general is prepared to~~] execute the duties
36 assigned in section four of this act, the attorney general, may, for
37 good cause shown, apply to the governor for such an extension of time.
38 The governor may grant or deny an extension of up to one year according
39 to his or her discretion. The attorney general shall notify the legisla-
40 tive bill drafting commission upon the occurrence of the enactment of
41 the legislation provided for in section four of this act in order that
42 the commission may maintain an accurate and timely effective data base
43 of the official text of the laws of the state of New York in furtherance
44 of effectuating the provisions of section 44 of the legislative law and
45 section 70-b of the public officers law.

46 § 17. This act shall take effect immediately; provided, however, that
47 the amendments to section 17-210 of the election law made by sections
48 nine, ten and eleven of this act shall take effect on the same date and
49 in the same manner as such section takes effect pursuant to section 5 of
50 chapter 226 of the laws of 2022; provided, further, that section 17-219
51 of the election law as added by section fifteen of this act shall be
52 deemed to have been in full force and effect on the same date as chapter
53 226 of the laws of 2022 took effect; and provided, further, that the
54 amendments to section 5 of chapter 226 of the laws of 2022 made by
55 section sixteen of this act shall be deemed to have been in full force
56 and effect on the same date as such chapter was enacted.