

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Alejo

February 17, 2015

An act to ~~amend Sections 12022 and 12023 of, and to add Section 12022.5 to, the Food and Agricultural Code, add the heading of Article 1 (commencing with Section 14025) and the heading of Article 2 (commencing with Section 14027) to, and to add Article 3 (commencing with Section 14040) to, Chapter 1.5 of Division 14 of the Elections Code, relating to pest control.~~ *elections.*

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Alejo. ~~Agricultural pest control advisers.~~ *California Voting Rights Act of 2001.*

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce the provisions of the CVRA, and, if the voter prevails in the case, he or she may be awarded reasonable litigation costs and attorney's fees. The CVRA requires a court to implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy a violation of the act.

This bill would prohibit the use of a district-based election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice. The bill would require a

court to implement specified remedies upon a finding that a district-based election was imposed or applied in a manner that impaired the ability of a protected class to elect candidates of its choice.

~~Existing law requires agricultural pest control advisers to be licensed by the Department of Pesticide Regulation. Under existing law, applicants for licensing are required to elect to be examined by the Director of Pesticide Regulation for certification in one or more identified specializations, including plant growth regulation.~~

~~This bill would specify that the certification for plant growth regulation includes plant and soil health.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares that the*
2 *purpose of this act is to address ongoing vote dilution and*
3 *discrimination in voting as matters of statewide concern, in order*
4 *to enforce the fundamental rights guaranteed to California voters*
5 *under Section 7 of Article I and Section 2 of Article II of the*
6 *California Constitution. Therefore, the provisions of this act shall*
7 *be construed liberally in furtherance of this legislative intent to*
8 *eliminate minority vote dilution. It is the further intent of the*
9 *Legislature that any remedy implemented under this act shall*
10 *comply with the 14th Amendment to the United States Constitution.*
11 *The Legislature also finds and declares that this act is consistent*
12 *with the decision of the Court of Appeal in Sanchez v. City of*
13 *Modesto (2006) 145 Cal.App.4th 660.*

14 *SEC. 2. The heading of Article 1 (commencing with Section*
15 *14025) is added to Chapter 1.5 of Division 14 of the Elections*
16 *Code, to read:*

17
18 *Article 1. General Provisions*
19

20 *SEC. 3. The heading of Article 2 (commencing with Section*
21 *14027) is added to Chapter 1.5 of Division 14 of the Elections*
22 *Code, to read:*

23
24 *Article 2. At-Large Elections*
25

1 *SEC. 4. Article 3 (commencing with Section 14040) is added*
2 *to Chapter 1.5 of Division 14 of the Elections Code, to read:*

3
4 *Article 3. District-Based Elections*
5

6 *14040. District-based elections shall not be imposed or applied*
7 *in a manner that impairs the ability of a protected class to elect*
8 *candidates of its choice as a result of the dilution or the abridgment*
9 *of the rights of voters who are members of a protected class.*

10 *14041. (a) A violation of Section 14040 is established if it is*
11 *shown that racially polarized voting occurs in elections for*
12 *members of the governing body of the political subdivision or in*
13 *elections incorporating other electoral choices by the voters of*
14 *the political subdivision. Elections conducted prior to the filing*
15 *of an action pursuant to Section 14040 and this section are more*
16 *probative to establish the existence of racially polarized voting*
17 *than elections conducted after the filing of the action.*

18 *(b) The occurrence of racially polarized voting shall be*
19 *determined from examining results of elections in which at least*
20 *one candidate is a member of a protected class or elections*
21 *involving ballot measures, or other electoral choices that affect*
22 *the rights and privileges of members of a protected class. One*
23 *circumstance that may be considered in determining a violation*
24 *of Section 14040 and this section is the extent to which candidates*
25 *who are members of a protected class and who are preferred by*
26 *voters of the protected class, as determined by an analysis of voting*
27 *behavior, have been elected to the governing body of a political*
28 *subdivision that is the subject of an action based on Section 14040*
29 *and this section.*

30 *(c) The fact that members of a protected class are not*
31 *geographically compact or concentrated does not preclude a*
32 *finding of racially polarized voting, or a violation of Section 14040*
33 *and this section, but may be a factor in determining an appropriate*
34 *remedy.*

35 *(d) Proof of an intent on the part of the voters or elected officials*
36 *to discriminate against a protected class is not required.*

37 *(e) Other factors, such as the history of discrimination, the use*
38 *of electoral devices or other voting practices or procedures that*
39 *may enhance the dilutive effects of the election system, denial of*
40 *access to those processes determining which groups of candidates*

1 will receive financial or other support in a given election, the
2 extent to which members of a protected class bear the effects of
3 past discrimination in areas such as education, employment, and
4 health, that hinder their ability to participate effectively in the
5 political process, and the use of overt or subtle racial appeals in
6 political campaigns are probative, but not necessary factors, to
7 establish a violation of Section 14040 and this section.

8 (f) (1) Except as provided in paragraph (2), the fact that a
9 district-based election was imposed on the political subdivision
10 as a result of an action filed pursuant to Article 2 shall not be a
11 defense to an action alleging a violation of this article.

12 (2) (A) If a court orders a political subdivision to adopt, and
13 subsequently approves, a district-based election system as a result
14 of an action filed pursuant to Article 2, there shall be a rebuttable
15 presumption in any subsequent action filed pursuant to this article
16 that the district-based election system of that political subdivision
17 does not violate this article. The presumption shall apply only to
18 the exact district-based election system that was approved by the
19 court and shall not apply if the boundaries of the districts of the
20 political subdivision are subsequently adjusted for any reason.

21 (B) This paragraph shall apply only to a district-based election
22 system that is approved by a court on or after January 1, 2017.

23 14042. (a) Upon a finding of a violation of Sections 14040
24 and 14041, the court shall implement an effective district-based
25 elections system that provides the protected class the opportunity
26 to elect candidates of its choice from single-member districts.

27 (b) If additional effective districts under subdivision (a) are not
28 possible without increasing the size of the governing body, or will
29 not alone provide an appropriate remedy, the court may order
30 additional remedies, including any of the following:

31 (1) Incrementally increasing the size of the governing body upon
32 approval of voters in the jurisdiction.

33 (2) Approving a single-member district-based election system
34 that provides the protected class the opportunity to join in a
35 coalition of two or more protected classes to elect candidates of
36 their choice if there is demonstrated political cohesion among the
37 protected classes.

38 (3) Issuing an injunction to delay an election.

39 14043. In any action to enforce Sections 14040 and 14041, the
40 court shall allow the prevailing plaintiff party, other than the state

1 or political subdivision thereof, a reasonable attorney's fee
2 consistent with the standards established in *Serrano v. Priest*
3 (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but
4 not limited to, expert witness fees and expenses as part of the costs.
5 Prevailing defendant parties shall not recover any costs, unless
6 the court finds the action to be frivolous, unreasonable, or without
7 foundation.

8 14044. Any voter who is a member of a protected class and
9 who resides in a political subdivision where a violation of Sections
10 14040 and 14041 is alleged may file an action pursuant to those
11 sections in the superior court of the county in which the political
12 subdivision is located.

13 14045. If any provision of this article or its application to any
14 person or circumstance is held invalid, Articles 1, 2, and the
15 remainder of this article, or the application of the provision to
16 other persons or circumstances, shall not be affected.

17 SECTION 1. Section 12022 of the Food and Agricultural Code
18 is amended to read:

19 12022. An applicant for licensing shall elect to be examined
20 for certification in one or more of the following categories:

- 21 (a) Control of insects, mites, and other invertebrates.
- 22 (b) Control of plant pathogens.
- 23 (c) Control of nematodes.
- 24 (d) Control of vertebrate pests.
- 25 (e) Control of weeds.
- 26 (f) Defoliation.
- 27 (g) Plant growth regulation, including plant and soil health.

28 SEC. 2. Section 12022.5 is added to the Food and Agricultural
29 Code, to read:

30 12022.5. Examinations for licensing and certification pursuant
31 to Section 12022 shall be prepared and administered by the
32 director.

33 SEC. 3. Section 12023 of the Food and Agricultural Code is
34 amended to read:

35 12023. An agricultural pest control adviser license may be
36 refused or may be revoked or suspended by the director as
37 necessary to carry out the purposes of this division. Cause for
38 refusal, revocation, or suspension shall include, but shall not be
39 limited to the following:

- 40 (a) Failure to put a recommendation in writing.

- 1 ~~(b) The making of false or fraudulent statements in any written~~
- 2 ~~recommendation.~~
- 3 ~~(c) Failure or refusal to comply with any provision of this~~
- 4 ~~chapter, or any other regulation adopted by the agricultural~~
- 5 ~~commissioner.~~
- 6 ~~(d) Failure or refusal to comply with any provisions of this~~
- 7 ~~division or of Division 7 (commencing with Section 12501) relating~~
- 8 ~~to pesticides or regulation of the department adopted pursuant to~~
- 9 ~~such provisions.~~
- 10 ~~(e) Failure to qualify by examination in accordance with Section~~
- 11 ~~12022.~~
- 12 ~~(f) Unprofessional conduct, as defined in Section 12023.5.~~