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HOUSE BILL NO. 2465

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 24.2-233, 24.2-235, and 24.2-238 of the Code of Virginia, relating to removal of public officials; procedures; costs.

Patrons—Morgan; Senator: Norment

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-233, 24.2-235, and 24.2-238 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-233. Removal of elected and certain appointed officers by courts.

Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or

2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:

a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance or marijuana, or

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia, or

c. Possession of any controlled substance or marijuana, and such conviction under a, b, or c has a material adverse effect upon the conduct of such office, or

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office.

The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds. *The circuit court shall not dismiss a petition because of an error or omission in the form of the petition if such error or omission is not material in determining whether the petition has been signed by the required number of registered voters.*

Any person removed from office under the provisions of subdivision 2 or 3 may not be subsequently subject to the provisions of this section for the same criminal offense.

§ 24.2-235. Procedure.

A petition for the removal of an officer shall state with reasonable accuracy and detail the grounds or reasons for removal and shall be signed by the person or persons making it under penalties of perjury. *The circuit court shall not dismiss the petition solely because of an error or omission in the form of the petition relating to its statement of the grounds or reasons for removal if such error or omission is not material in determining whether the statement of the grounds or reasons for removal provides a reasonable basis under § 24.2-233 to consider the removal of the officer.*

As soon as the petition is filed with the court, the court shall issue a rule requiring the officer to show cause why he should not be removed from office, the rule alleging in general terms the cause or causes for such removal. The rule shall be returnable in not less than five nor more than ten days and shall be served upon the officer with a copy of the petition. Upon return of the rule duly executed, unless good cause is shown for a continuance or postponement to a later day in the term, the case shall be tried on the day named in the rule and take precedence over all other cases on the docket. If upon trial it is determined that the officer is subject to removal under the provisions of § 24.2-233, he shall be removed from office.

§ 24.2-238. Costs.

A. If a judicial proceeding under this article is dismissed in favor of the respondent, the court in its discretion may require the state agency or political subdivision which the respondent serves to pay court costs or reasonable attorney fees, or both, for the respondent.

B. *No person who signs a petition for the removal of an official pursuant to § 24.2-233 or who circulates such a petition (i) shall be liable for any costs associated with removal proceedings conducted*

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59 *pursuant to the petition, including attorney fees incurred by any other party or court costs, or (ii) shall*
60 *have sanctions imposed against him pursuant to § 8.01-271.1. However, the court may assess such costs*
61 *or impose such sanctions upon its finding by clear and convincing evidence that the petitioner acted*
62 *with a malicious intent to harm the official.*