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HOUSE BILL NO. 1733

Offered January 11, 2017

Prefiled January 7, 2017

A BILL to amend and reenact §§ 24.2-233 through 24.2-236 and 24.2-238 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-235.1, relating to removal of public officers from office; recall elections for certain elected and appointed officers.

Patrons—Anderson, Aird and Bell, Richard P.

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-233 through 24.2-236 and 24.2-238 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-235.1 as follows:

§ 24.2-233. Reasons for removal of public officers from office.

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

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;

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;

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 subdivision a, b, or c has a material adverse effect upon the conduct of such office;

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; or

4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, and such 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 removal of an officer appointed for a term certain shall be governed by the provisions of §§ 24.2-234 and 24.2-235. The removal of an elected officer or officer who has been appointed to fill an elective office shall be governed by the provisions of § 24.2-235.1.

Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be subsequently subject to the provisions of this section for the same criminal offense.

§ 24.2-234. Removal of officer appointed for a term certain.

Any officer appointed to an office for a term established by law may be removed from office, under the provisions of in accordance with the procedure set forth in § 24.2-235, for any one of the reasons set forth in § 24.2-233, upon a petition filed with the circuit court in whose jurisdiction the officer resides. Such petition shall be signed by the person or a majority of the members of the authority who appointed him, if the appointing person or authority is not given the unqualified power of removal.

The circuit court also shall proceed pursuant to § 24.2-235 for the removal of a member of a local electoral board or general registrar upon a petition signed by a majority of the members of the State Board of Elections as provided in § 24.2-103.

§ 24.2-235. Procedure for removal by courts.

A petition for the removal of an officer pursuant to § 24.2-234 shall state with reasonable accuracy

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

64 As soon as the petition is filed with the court, the court shall issue a rule requiring the officer to
65 show cause why he should not be removed from office, the rule alleging in general terms the cause or
66 causes for such removal. The rule shall be returnable in not less than five nor more than ~~ten~~ 10 days
67 and shall be served upon the officer with a copy of the petition. Upon return of the rule duly executed,
68 unless good cause is shown for a continuance or postponement to a later day in the term, the case shall
69 be tried on the day named in the rule and take precedence over all other cases on the docket. If upon
70 trial it is determined that the officer is subject to removal under the provisions of § 24.2-233, he shall be
71 removed from office.

72 **§ 24.2-235.1. Procedure for removal by recall election.**

73 A. Any elected officer or officer appointed to fill an elected office may be recalled and removed from
74 office, in accordance with the provisions of this section, for any one of the reasons set forth in
75 § 24.2-233.

76 B. A petition signed by a number of registered voters who reside within the jurisdiction of the officer
77 equal to at least 20 percent of the total number of votes cast at the last election for the office the officer
78 holds shall be filed with the clerk of the circuit court for the county or city in which the officer resides.
79 The petition shall state with reasonable accuracy and detail the grounds or reasons for recall and
80 removal. The clerk of the circuit court shall review the petition to determine if it contains the requisite
81 number of signatures. No petition shall be dismissed solely because of an error or omission in the form
82 of the petition relating to its statement of the grounds or reasons for removal if such error or omission
83 is not material in determining whether the statement of the grounds or reasons for removal provides a
84 reasonable basis under § 24.2-233.

85 Upon a determination the petition is sufficient, a judge of the circuit court shall issue a writ
86 ordering a recall election, the date of which shall comply with the provisions of § 24.2-682.

87 C. Any registered voter who is qualified to vote for the officer subject to the recall may vote in the
88 recall election. The recall election shall be conducted in the manner prescribed by law for the conduct
89 of special elections.

90 D. The ballot for the recall election shall be printed to state the question as follows:

91 "Shall (name of officer) be removed from the office (name of office) by recall?"

92 The ballots shall be printed, marked, and counted and returns made and canvassed as in other
93 elections. The results shall be certified by the secretary of the electoral board to the State Board and to
94 the circuit court.

95 E. If a majority of the votes cast on the question of removal are affirmative, the officer shall be
96 removed from office and the vacancy in that office shall be filled in accordance with law.

97 **§ 24.2-236. Suspension from office pending hearing and appeal.**

98 In the event of a judicial proceeding under §§ 24.2-231, 24.2-232, ~~24.2-233~~, or ~~24.2-234~~ 24.2-235, or
99 a recall election under § 24.2-235.1, the circuit court may enter an order suspending the officer pending
100 the hearing or recall election. The court may, in its discretion, continue the suspension until the matter
101 is finally disposed of in the Supreme Court or otherwise. During the suspension the court may appoint
102 some suitable person to act in the officer's place. The officer's compensation shall be withheld and kept
103 in a separate account and paid to him if and when the judicial proceedings ~~result~~ or recall election
104 results in his favor. Otherwise, it shall be paid back to the county, city, town or State Treasurer who
105 paid it.

106 **§ 24.2-238. Costs.**

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

110 B. No person who signs a petition for the removal of an official pursuant to § ~~24.2-233~~ 24.2-234 or
111 24.2-235.1 or who circulates such a petition (i) shall be liable for any costs associated with removal
112 proceedings conducted pursuant to the petition, including attorney fees incurred by any other party or
113 court costs, or (ii) shall have sanctions imposed against him pursuant to § 8.01-271.1.