

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 730

*An Act to provide for the submission to the voters of a proposed amendment to Section 10 of Article VI of the Constitution of Virginia, relating to disabled and unfit judges.*

[S 3]

Approved April 16, 1998

### **Be it enacted by the General Assembly of Virginia:**

1. § 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 1998, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 10 of Article VI of the Constitution of Virginia as follows:

### ARTICLE VI JUDICIARY

#### Section 10. Disabled and unfit judges.

The General Assembly shall create a Judicial Inquiry and Review Commission consisting of members of the judiciary, the bar, and the public and vested with the power to investigate charges which would be the basis for retirement, censure, or removal of a judge. The Commission shall be authorized to conduct hearings and to subpoena witnesses and documents. Proceedings *and documents* before the Commission ~~shall~~ *may* be confidential *as provided by the General Assembly in general law*.

If the Commission finds the charges to be well-founded, it may file a formal complaint before the Supreme Court.

Upon the filing of a complaint, the Supreme Court shall conduct a hearing in open court and, upon a finding of disability which is or is likely to be permanent and which seriously interferes with the performance by the judge of his duties, shall retire the judge from office. A judge retired under this authority shall be considered for the purpose of retirement benefits to have retired voluntarily.

If the Supreme Court after the hearing on the complaint finds that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, it shall censure him or shall remove him from office. A judge removed under this authority shall not be entitled to retirement benefits, but only to the return of contributions made by him, together with any income accrued thereon.

This section shall apply to justices of the Supreme Court, to judges of other courts of record, and to members of the State Corporation Commission. The General Assembly also may provide by general law for the retirement, censure, or removal of judges of any court not of record, or other personnel exercising judicial functions.

#### § 2. The ballot shall contain the following question:

"Question: Shall the Constitution of Virginia be amended to delete the present requirement that the proceedings of the Judicial Inquiry and Review Commission concerning charges against judges shall be confidential so that the General Assembly can provide by law to what extent Commission proceedings and documents will be confidential?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684 of the Code of Virginia. The State Board of Elections shall comply with § 30-19.9 of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 1999.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.