

23100264D

SENATE BILL NO. 1431

Senate Amendments in [] - February 3, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 24.2-233, as it is currently effective and as it shall become effective, and 24.2-235 through 24.2-238 of the Code of Virginia, relating to procedure for removal of elected and certain appointed officers by courts.*

Patron Prior to Engrossment—Senator Surovell

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-233, as it is currently effective and as it shall become effective, and 24.2-235 through 24.2-238 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-233. (Effective until January 1, 2024) 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 *a clear, ministerial duty of the office*, misuse of *the office*, or incompetence in the performance of *the duties of the office* 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~~ 10 percent of the total number of votes cast at the last election for the office that the officer holds.

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.

§ 24.2-233. (Effective January 1, 2024) 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 *a clear, ministerial duty of the office*, misuse of *the office*, or incompetence in the performance of *the duties of the office* 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;

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 and such conviction under subdivision a, b, or c has a

ENGROSSED

SB1431E

59 material adverse effect upon the conduct of such office;

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

63 4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of
64 § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into
65 dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of
66 age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose
67 himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct of
68 such office.

69 The petition must be signed by a number of registered voters who reside within the jurisdiction of
70 the officer equal to 10 percent of the total number of votes cast at the last election for the office that the
71 officer holds.

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

74 **§ 24.2-235. Procedure.**

75 A. A petition for the removal of an officer shall be on a form prescribed by the State Board of
76 Elections and shall state with reasonable accuracy and detail the grounds or reasons for removal and
77 shall be signed by the person or persons making it under penalties of perjury. ~~The circuit court shall not~~
78 ~~dismiss the petition solely because of an error or omission in the form of the petition relating to its~~
79 ~~statement of the grounds or reasons for removal if such error or omission is not material in determining~~
80 ~~whether the statement of the grounds or reasons for removal provides a reasonable basis under~~
81 ~~§ 24.2-233 to consider the removal of the officer. The petition shall be filed together with either (i)~~
82 ~~three paper copies or (ii) an electronic copy. The clerk shall promptly provide a paper or electronic~~
83 ~~copy of the petition to [the attorney for the Commonwealth, the general registrar, and the officer who~~
84 ~~is the subject of the removal petition the officer who is the subject of the removal petition, the attorney~~
85 ~~for the Commonwealth, and, for a removal petition filed pursuant to § 24.2-233, the general registrar] .~~
86 ~~[If the subject of the petition is the attorney for the Commonwealth, the Chief Justice of the Supreme~~
87 ~~Court of Virginia shall appoint an alternate attorney for the Commonwealth to receive the copy of the~~
88 ~~petition.]~~

89 B. The general registrar shall review [~~the a~~] petition [filed pursuant to § 24.2-233] and determine
90 its sufficiency in accordance with the uniform standards approved by the State Board of Elections. The
91 general registrar shall certify the petition within 10 business days and promptly file such certification
92 with the clerk of the circuit court. The general registrar may seek an extension of time from the circuit
93 court for good cause shown. The certification shall state the number of signatures required, the number
94 of signatures on the petition, and the number of valid signatures. The certification shall identify those
95 signatures found to be invalid. The certification shall also identify any material omissions in the
96 petition.

97 C. Upon receipt of the petition, the attorney for the Commonwealth shall promptly review the
98 petition and determine if valid grounds exist to remove the officer [pursuant to § 24.2-233] . Upon
99 determining that valid grounds exist for removal, the attorney for the Commonwealth shall notify the
100 circuit court. Otherwise, the attorney for the Commonwealth shall request that the court dismiss the
101 petition.

102 D. As soon as the ~~petition is filed with the court~~ attorney for the Commonwealth notifies the circuit
103 court that the petition presents valid grounds for removal, the court shall issue a rule requiring the
104 officer to show cause why he should not be removed from office, the rule alleging in general terms the
105 cause or causes for such removal. The rule shall be returnable in not less than five nor more than ~~ten~~ 10
106 days and shall be served upon the officer with a copy of the petition.

107 E. Upon return of the rule duly executed, unless good cause is shown for a continuance or
108 postponement to a later day in the term, the case shall be tried on the day named in the rule and take
109 precedence over all other cases on the docket. ~~The circuit court shall not dismiss the petition solely~~
110 ~~because of an error or omission in the form of the petition relating to its statement of the grounds or~~
111 ~~reasons for removal if such error or omission is not material in determining whether the statement of~~
112 ~~the grounds or reasons for removal provides a reasonable basis under § 24.2-233 to consider the~~
113 ~~removal of the officer. If upon trial it is determined by clear and convincing evidence that removal of~~
114 ~~the officer is subject to removal warranted under the provisions of § 24.2-233, he the officer shall be~~
115 ~~removed from office.~~

116 **§ 24.2-236. Suspension from office pending hearing and appeal.**

117 In the event of a judicial proceeding under § 24.2-231, 24.2-232, 24.2-233, or 24.2-234, the circuit
118 court may enter an order suspending the officer pending the hearing. ~~The court may, in its discretion,~~
119 ~~continue the suspension until the matter is finally disposed of in the Supreme Court or otherwise. Any~~
120 ~~officer convicted of who pleads guilty or nolo contendere to, or who is found guilty by a judge or jury~~

of, a felony under the laws of any state or the United States shall be automatically suspended upon such conviction, regardless of any appeals, pleadings, delays, or motions. The court may, in its discretion, continue the suspension until the matter is finally disposed of in the Supreme Court or otherwise. During the suspension, the court may appoint some suitable person to act in the officer's place. The officer's compensation shall be withheld and kept in a separate account and paid to him if and when the judicial proceedings result in his favor. Otherwise, it shall be paid back to the county, city, town, or State Treasurer who paid it.

§ 24.2-237. Who to represent Commonwealth; trial by jury; appeal.

The attorney for the Commonwealth shall represent the Commonwealth in ~~any trial~~ *all proceedings* under this article. If the proceeding is against the attorney for the Commonwealth, the court shall appoint an attorney to represent the Commonwealth. *The Commonwealth and the officer shall be the only parties to the action.* Any officer proceeded against shall have the right to demand a trial by jury. The Commonwealth and the ~~defendant~~ *officer* shall each have the right to appeal to the Court of Appeals upon the record made in the trial court and the Court of Appeals shall consider and determine such cases.

§ 24.2-238. Costs.

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

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 pursuant to the petition, including attorney fees incurred by any other party or court costs, or (ii) shall have sanctions imposed against him pursuant to § 8.01-271.1.

ENGROSSED

SB1431E