

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 24.2-233, 24.2-235, and 24.2-237 of the Code of Virginia, relating to removal of public officers from office; petition requirements; procedures.

[H 265]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-233, 24.2-235, and 24.2-237 of the Code of Virginia are amended and reenacted as follows:

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

A. 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 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.

B. The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to 10 percent of the total number of votes cast at the last election for the office that the officer holds. *All signatures shall be collected within 90 days of the first signature collected and no signatures collected after such period shall count toward the required number.*

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

§ 24.2-235. Procedure.

A. A petition for the removal of an officer shall be on a form prescribed by the State Board of Elections and 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 petition shall be filed together with either (i) three paper copies or (ii) an electronic copy. The clerk shall promptly provide a paper or electronic copy of the petition to the officer who is the subject of the removal petition, the attorney for the Commonwealth, and, for a removal petition filed pursuant to § 24.2-233, the general registrar. If the subject of the petition is the attorney for the Commonwealth *or if the attorney for the Commonwealth has a conflict of interest or is otherwise unavailable*, the Chief Justice of the Supreme Court of Virginia shall appoint an alternate attorney for the Commonwealth to receive the copy of the petition.

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

omissions in the petition.

C. Upon receipt of the petition, the attorney for the Commonwealth shall promptly review the petition and determine if valid grounds exist to remove the officer pursuant to § 24.2-103, 24.2-109, or 24.2-233. Upon determining that valid grounds exist for removal, the attorney for the Commonwealth shall notify the circuit court. Otherwise, the attorney for the Commonwealth shall request that the court dismiss the petition.

D. The attorney for the Commonwealth shall request that the court dismiss the petition and the court shall do so if the factual or legal allegations therein are not materially different than the factual or legal allegations set forth in a previously filed petition or litigated in a trial pursuant to a previously filed petition that was against the same subject and that was dismissed with prejudice or that did not result in the subject's removal from office at trial pursuant to subsection F.

~~D.~~ E. As soon as the attorney for the Commonwealth notifies the circuit court that the petition presents valid grounds for removal, 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 10 days and shall be served upon the officer with a copy of the petition.

~~E.~~ F. 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. 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 § 24.2-103, 24.2-109, or 24.2-233 to consider the removal of the officer. If upon trial it is determined by clear and convincing evidence that removal of the officer is warranted under § 24.2-103, 24.2-109, or 24.2-233, the officer shall be removed from office.

G. No discovery shall be allowed prior to a determination that valid grounds exist pursuant to subsection E.

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

The attorney for the Commonwealth shall represent the Commonwealth in all proceedings under this article. If the proceeding is against the attorney for the Commonwealth *or if the attorney for the Commonwealth has a conflict of interest or is otherwise unavailable*, the ~~court~~ Chief Justice of the Supreme Court of Virginia shall appoint an *alternate* attorney for the Commonwealth 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 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.