

AN ACT to amend, revise, and codify chapter twenty-one (21) of title four (4) of the compiled code of Iowa and of the supplement to said code, relating to removal from office.

Be It Enacted by the General Assembly of the State of Iowa:

That chapter twenty-one (21) of title four (4) of the compiled Code of Iowa and of the supplement to said Code is amended, revised, and codified to read as follows:

Section 1. Removal by court or judge. Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For wilful or habitual neglect or refusal to perform the duties of his office.

2. For wilful misconduct or maladministration in office.

3. For corruption.

4. For extortion.

5. Upon conviction of a felony.

6. For intoxication, or upon conviction of being intoxicated.

Sec. 2. Jurisdiction. The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.

2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.

3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed.

Sec. 3. Who may file petition. The petition for removal may be filed:

1. By the attorney general in all cases.

2. As to state officers, by not fewer than twenty-five (25) electors of the state.

3. As to any other officer, by five (5) qualified electors of the district, county, or municipality where the duties of the office are to be performed.

4. As to district officers, by the county attorney of any county in the district.

5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed.

Sec. 4. Form of petition - other pleading. The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto.

Sec. 5. Notice to accused. Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten (10) days nor more than twenty (20) days after completed service of said notice.

Sec. 6. Suspension from office pending trial. Upon the filing of the petition in the office of the clerk of the district court, and presentation of the same to the judge, the court or judge may suspend the accused from office, if in his judgement sufficient cause appear from the petition and affidavits which may be presented in support of the charges contained therein.

Sec. 7. Effect of suspension. In case of suspension, the order shall be served upon the officer in question and it shall be unlawful for him to exercise or attempt to exercise any of the functions of his office until such suspension is revoked.

Sec. 8. Governor to direct filing. The governor shall direct the attorney general to file such petition against any of said officers whenever he has reasonable grounds for such direction. The attorney general shall comply with such direction and prosecute such action.

Sec. 9. Duty of county attorney. The county attorney of any county in which an action is instituted under the last preceding section shall, at the request of the attorney general, appear and assist in the prosecution of such action. In all other cases instituted in his county, the county attorney shall appear and prosecute when the officer sought to be removed is other than himself.

Sec. 10. Special prosecutor when county attorney is defendant. When the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings.

Sec. 11. Application for judge outside district. At any time not less than five (5) days prior to the time the accused is required to appear, a copy of the petition may be filed by either party in the office of the clerk of the supreme court, together with an application to the supreme court for the appointment of a judge outside the judicial district in which the trial is to be had to hear said petition.

Sec. 12. Appointment of judge outside. It shall be the duty of the chief justice of the supreme court, upon the filing of said copy and application, or in his absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge outside of such district to proceed to the county in which the complaint was filed, and hear the same. The clerk of the supreme court shall transmit a certified copy of said order to the clerk of the district court where the cause is pending.

Sec. 13. Order by appointed judge. Upon the receipt of such commission, said judge shall immediately make an order fixing a time and place of hearing in the county in which the petition is filed. Said time shall not be less than ten (10) days nor more than twenty (20) days from the date of the order.

Sec. 14. Filing order - effect. Said order shall be forwarded to the clerk of the district court of the county in which the hearing is to be had. Said order shall supersede the time and place specified in any notice already served.

Sec. 15. Notice to accused. The clerk shall file said order, and forthwith give the defendant, by mail, notice of the time and place of hearing.

Sec. 16. Nature of action - when triable. The proceeding shall be summary in its nature, shall be triable as an equitable action, and may be heard either in vacation or term time.

Sec. 17. Temporary officer. Upon such suspension, the board or person authorized to fill a vacancy in the office, shall temporarily fill the office by appointment. In case of a suspension of a clerk or sheriff, the district court or judge thereof may supply such place by appointment until a temporary appointment shall be made. Such orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor, and be by him entered in the election book; those of city and town officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment.

Sec. 18. Judgment of removal. Judgment of removal, if rendered, shall be entered of record, and the vacancy forthwith filled as provided by law.

Sec. 19. Hearing on appeal. In case of appeal, the supreme court shall fix the time of hearing and the filing of abstracts and arguments, and said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard.

Sec. 20. Effect of appeal. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore said defendant to office pending such appeal.

Sec. 21. Effect of dismissal. If the petition be dismissed on final hearing on the merits, the defendant shall have judgment against the state, if the action was instituted by the attorney general, and against the county, city, town, or other subdivision of the state if the action is otherwise instituted, for the reasonable and necessary expenses incurred by the defendant in making his defense, including a reasonable attorney fee, to be fixed by the court or judge. Such payment shall be made out of any funds in the state treasury not otherwise appropriated, or out of the general fund of the county, city, town, or other subdivision of the state, as the case may be.

Sec. 22. Complaint without probable cause. If the action is instituted upon complaint of citizens, and it appears to the court that there was no reasonable cause for filing the complaint, such expense may be taxed as costs against the complaining parties.

Sec. 23. Expense of judge and reporter. A judge who is required to preside at such hearing, outside of his judicial district, and the judge's official reporter who is required to report such hearing, shall be allowed, from the state treasury, their necessary and actual expenses incurred by reason of such hearing.

Sec. 24. Appointive state officers. Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes:

1. Habitual or wilful neglect of duty.
2. Any disability preventing a proper discharge of the duties of his office.
3. Gross partiality.
4. Oppression.
5. Extortion.
6. Corruption.
7. Wilful misconduct or maladministration in office.
8. Conviction of felony.
9. A failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.
10. Becoming ineligible to hold office.

Sec. 24-a1. Subpoenas - contempt. The executive council, in any investigation held by it, may issue subpoenas for witnesses and for the production of records, books, papers, and other evidence. If a witness, duly subpoenaed, refuses to appear, or refuses to testify, or otherwise refuses to comply with said subpoena, such fact shall be certified by such council to the district court or judge of the county where the hearing is being held and said court or judge shall proceed with said refusal as though the same had occurred in a legal proceeding before said court or judge.

Sec. 24-a2. Witness fee. Said witnesses, if in the employ of the state, shall not be entitled to any witness fees but shall receive the mileage allowed witnesses in the district court. Other witnesses shall receive the fees and mileage allowed witnesses in district court. A sum sufficient to pay said fees and mileage is hereby appropriated out of any unappropriated funds in the state treasury.

Sec. 25. City or town officers. Any city or town officer, elective or appointive, may be removed from office, after hearing on written charges filed with the council of such city or town, for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds (2-3) vote of the entire council.

Sec. 26. Method of removal - limitation. The council, including councils of cities acting under special charters, may, by ordinance, provide as to the manner of preferring and hearing such charges. No person shall be twice removed by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district as in this chapter provided.

Approved April 26, 1924.

CHAPTER 24  
VACANCIES IN OFFICE  
S. F. 35

AN ACT to amend, revise, and codify sections six hundred sixty-eight (668) and six hundred seventy-one (671) of the compiled code of Iowa, relating to vacancies in office.

Be It Enacted by the General Assembly of the State of Iowa:

That sections six hundred sixty-eight (668) and six hundred seventy-one (671) of the compiled Code of Iowa are amended, revised, and codified to read as follows:

Section 1. Vacancies - how filled. Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. United States senator. In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor.

2. State offices. In all state offices, judges of courts of record, officers, trustees, inspectors and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided.

3. Supreme court appointees. In the offices of clerk and reporter of the supreme court, by the supreme court.

4. County offices. In county offices, including justices of the peace and constables, by the board of supervisors.