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SENATE BILL NO. 1328

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 31, 2023)

(Patrons Prior to Substitute—Senators McClellan and Boysko)

A BILL to amend and reenact § 24.2-233, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to removal of elected officers and certain appointed officers; petition for removal.

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, of the Code of Virginia is 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 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~~ 30 percent of the total number of votes cast at the last election for the office that the officer holds. *All of the signatures on such petition shall be collected within 90 days. No signatures on such petition shall be collected (i) within 75 days of a primary election or party nomination process in which the officer is a candidate and through the date of the next general election if the officer is the winner of the primary election or party nomination process or (ii) on the date of any general or special election in which the officer is a candidate through the thirtieth day after the officer takes office if the officer is the winner of the general or special election.*

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.

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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;

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug

60 paraphernalia; or

61 c. Possession of any controlled substance and such conviction under subdivision a, b, or c has a
62 material adverse effect upon the conduct of such office;

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

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

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73 the officer equal to ~~40~~ 30 percent of the total number of votes cast at the last election for the office that
74 the officer holds. *All of the signatures on such petition shall be collected within 90 days. No signatures*
75 *on such petition shall be collected (i) within 75 days of a primary election or party nomination process*
76 *in which the officer is a candidate and through the date of the next general election if the officer is the*
77 *winner of the primary election or party nomination process or (ii) on the date of any general or special*
78 *election in which the officer is a candidate through the thirtieth day after the officer takes office if the*
79 *officer is the winner of the general or special election.*

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