

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 458

An Act to amend the Code of Virginia by adding a section numbered 32.1-174.3, relating to appointment of receiver for certain private waterworks.

[S 966]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 32.1-174.3 as follows:

§ 32.1-174.3. Appointment of receiver for certain private waterworks; grounds for such appointment; petition and hearing, etc.

A. In addition to the remedies provided in § 32.1-27 and this chapter for civil and criminal penalties and injunctive or other relief, the Commissioner may petition the circuit court for the jurisdiction in which any private waterworks is located for the appointment of a receiver for such waterworks in accordance with the provisions of this section. Such petition may be filed at any time that the Commissioner finds that the waterworks is unable or unwilling to provide adequate and safe service for any of the following reasons:

- 1. The waterworks can no longer be depended upon to furnish pure water;*
- 2. The waterworks has inadequate capacity to furnish pure water to its customers;*
- 3. The owner has failed to comply with an order issued by the Commissioner;*
- 4. The owner has abandoned the waterworks and has discontinued supplying pure water to his customers;*
- 5. The owner is subject to a forfeiture order pursuant to § 32.1-174.1; or*
- 6. The Commissioner has issued an emergency order because there is an imminent danger to the public health and welfare resulting from the operation of the waterworks or the source of the water supply.*

B. Upon the filing of a petition for appointment of a receiver for a private waterworks, the court shall hold a hearing within 10 days, at which time the Commissioner and the owner of the waterworks may present evidence. The court may grant the petition if it finds any one or more of the conditions identified in subsection A and the court further finds that the conditions will not be remedied and that the health and welfare of the owner's customers will not be protected unless the petition is granted.

C. Upon appointment the receiver shall take possession of the assets of the waterworks and shall operate the waterworks in the best interests of the customers. The receiver shall have such powers and duties to operate and manage the waterworks as the court may grant and direct, including the filing of such reports as the court may direct and the power to receive, conserve, protect, and disburse funds; further, the provisions of Article 1 (§ 8.01-582 et seq.) of Chapter 22 of Title 8.01 shall apply, mutatis mutandis.

The court may grant injunctive relief as it deems appropriate to the Commissioner or the receiver either in conjunction with or subsequent to the granting of a petition for appointment of a receiver under this section.

D. Control of and responsibility for the waterworks shall remain in the receivership until the waterworks can, in the best interest of the customers, be returned to the owner, transferred to a new owner, or otherwise configured as the court may determine to be in the best interests of the public and the customers.

E. The court may terminate the receivership on the motion of the Commissioner, the receiver, or the owner, upon finding, after a hearing, that the conditions initiating the petition for the appointment of a receiver have been eliminated or resolved. Within 30 days after such termination, the receiver shall file a complete report of his activities with the court, including an accounting for all property of which he took possession and all funds collected.

A receiver appointed pursuant to this section shall be an officer of the court, shall not be liable for the conditions of the waterworks that existed prior to his receivership, and shall not be personally liable, except for his own gross negligence or intentional acts, to injuries or damage to property relating to the waterworks during his receivership.

This subsection shall not, however, be construed to relieve any owner of any duty imposed by law or of any civil or criminal liability incurred by reasons of any act or omission of such owner.