§1319-W. Rights of action against financial guarantors

If the owner or operator of a facility permitted under this subchapter is in liquidation, reorganization or adjustment pursuant to the federal Bankruptcy Reform Act of 1978, Public Law 95-598, as amended, or when, with reasonable diligence, jurisdiction in any state court or any federal court can not be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial capacity must be provided under this subchapter may be asserted by the department directly against the guarantor providing evidence of financial capacity. For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial capacity for an owner or operator under this subchapter. [PL 1989, c. 794, §8 (NEW).]

1. Rights of guarantor. In any action pursuant to this section, the guarantor is entitled to invoke all rights and defenses that would be available to the owner or operator if any action was brought against the owner or operator by the claimant and that would be available to the guarantor if an action was brought against the guarantor by the owner or operator.
[PL 1989, c. 794, §8 (NEW).]

2. Liability. The total liability of any guarantor is limited to the aggregate amount that the guarantor has provided as evidence of financial capacity to the board on behalf of the owner or operator under this subchapter. Nothing in this section may be construed to limit any other liability of a guarantor to its owner or operator as established by state or federal statutory, contractual or common law including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this section may be construed to diminish the liability of any person under this subchapter or other applicable law.
[PL 1989, c. 794, §8 (NEW).]

SECTION HISTORY

PL 1989, c. 794, §8 (NEW).

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