WEST VIRGINIA CODE: §22-18-25

§22-18-25. Financial responsibility provisions.

(1) Financial responsibility required by subdivision (4), subsection (a), section six of this article may be established in accordance with rules promulgated by the director by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In promulgating requirements under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

(2) In any case where the owner or operator is in bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot 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 responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this article. Nothing in this subsection limits any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection diminishes the liability of any person under section 107 or 111 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 or other applicable law.

(4) For the purposes of this section, the term "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for an owner or operator under this section.

WV Legislature