

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
95th General Assembly
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As Engrossed: S3/10/25

A Bill

SENATE BILL 329

By: Senator J. Boyd

By: Representative R. Burkes

For An Act To Be Entitled

AN ACT TO CREATE THE ONLINE MARKETPLACE GUARANTEES
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ONLINE MARKETPLACE
GUARANTEES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 66, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Online Marketplace Guarantees Act

23-66-801. Title.

This subchapter shall be known and may be cited as the "Online Marketplace Guarantees Act".

23-66-802. Purposes.

The purpose of this subchapter is to:

(1) Create a legal framework within which an online marketplace or its affiliates may offer or sell an online marketplace guarantee in this state;

(2) Protect consumers by promoting transparency, fairness, and accountability related to online marketplace guarantees and placing the risk of innovation on the online marketplace providers rather than consumers;

(3) Encourage innovation in the marketing and development of



more economical and effective means of providing an online marketplace guarantee; and

(4) Permit and encourage fair and effective competition among different providers.

23-66-803. Definitions.

As used in this subchapter:

(1) "Online marketplace" means a person that:

(A) Provides an online application, software, website, system, or other medium through which a service is advertised or is offered to the public as available in this state;

(B) Provides, directly or indirectly, or maintains a platform for services by performing:

(i) Transmitting or otherwise communicating the offer or acceptance of a transaction between two (2) platform users; or

(ii) Owning or operating the electronic infrastructure or technology that brings two (2) or more platform users together;

(C) If engaged in the sale or offering of online marketplace guarantees, engages only in a manner that is ancillary to the conduct of its primary legitimate business or activity; and

(D) Provides services not provided as a state or local government entity or vendor;

(2) "Online marketplace guarantee" means a contract or agreement issued in connection with an online marketplace, whether or not for a separate consideration, to guarantee a platform user's obligation to repair, replace, or indemnify another platform user for any damages or loss of income arising out of use of the online marketplace, with or without additional provision for incidental payment of indemnity;

(3) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

(4) "Platform contract holder" means a platform user who is the beneficiary or holder of an online marketplace guarantee;

(5) "Platform user" means a user of an online marketplace who is

subject to the online marketplace's terms of service;

(6) "Provider" means an online marketplace or an affiliate or representative of an online marketplace who issues, makes, provides, sells, or offers to sell as well as administers, either directly or through a third party, an online marketplace guarantee;

(7) "Reimbursement insurance policy" means a policy of insurance issued to a provider and under which the insurer agrees, for the benefit of platform contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the online marketplace guarantee in the event of nonperformance by the provider; and

(8)(A) "Separate consideration" means a separately stated consideration paid to a provider for an online marketplace guarantee that is paid at the voluntary election of the person purchasing the online marketplace guarantee.

(B) "Separate consideration" does not include a revenue sharing agreement between a provider and platform user or any consideration collected by the online marketplace that is primarily related to the underlying service provided by the online marketplace.

23-66-804. Requirements for doing business.

(a) An online marketplace guarantee shall not be issued, sold, or offered for sale in this state unless the provider has:

(1) If sold for separate consideration, provided an electronic or written record of the purchase of the online marketplace guarantee to the platform contract holder;

(2) Made the online marketplace guarantee terms available on the provider's website; and

(3) Complied with this subchapter.

(b) A provider of online marketplace guarantees sold or offered in this state shall file a registration with the Insurance Commissioner on a form and at a fee prescribed by the commissioner.

(c) To ensure the faithful performance of a provider's obligations to its platform contract holders, each provider who is obligated to a platform contract holder shall comply with at least one (1) of the following requirements:

(1) Insure all online marketplace guarantees under a

reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or issued under § 23-65-308;

(2) For at least thirty (30) days in any ninety-day period, maintain a market capitalization of at least two hundred million dollars (\$200,000,000) on a securities exchange registered as a national securities exchange or a securities market regulated under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78 et seq., as it existed on January 1, 2025, as reported by the national securities exchange at the close of each trading day; or

(3)(A) Maintain a net cash balance or net worth of at least fifty million dollars (\$50,000,000).

(B) Upon request, the provider or provider's parent company shall provide the commissioner with financial statements to support the net cash balance or net worth as required under subdivision (c)(3)(A) of this section.

(C) Financial statements may include without limitation:

(i) A Form 10-K or Form S-1 filed with the United States Securities and Exchange Commission within the last calendar year, including any amendments; or

(ii) A copy of the company's audited financial statements with a reporting date within the last calendar year.

(D) If the provider's parent company's financial statements are provided to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to online marketplace guarantees sold by the provider in this state.

23-66-805. Online marketplace guarantees.

(a) Online marketplace guarantees do not constitute insurance and are not required to comply with the Arkansas Insurance Code other than as expressly made applicable in this subchapter, provided the provider has registered with the Insurance Commissioner as required by § 23-66-804.

(b) The following activities by a provider or a provider's representative do not constitute the transaction of insurance and are likewise exempt from any licensing requirements under the Arkansas Insurance Code:

(1) Marketing, providing, selling, or offering to sell online marketplace guarantees in compliance with this subchapter;

(2) Determining amounts payable under online marketplace guarantees including, with respect to claims made by platform contract holders:

(A) Investigating, negotiating, or administering settlements of claims; or

(B) Applying the factual circumstances of the claim to the online marketplace guarantee's terms; or

(3) Collecting separate consideration in connection with online marketplace guarantees.

(c) A provider may:

(1) Charge separate consideration for an online marketplace guarantee; and

(2)(A) Provide varying levels of service and functionality depending on whether a platform user has paid separate consideration.

(B) Any separate consideration collected for online marketplace guarantees shall not be subject to premium taxes.

(d) This subchapter shall not be construed to limit a provider's rights to seek recourse from a platform user to the extent of any contractual obligation by any means permitted under an online marketplace's terms of service.

(e) An online marketplace guarantee may set a minimum threshold amount of damages that limit amounts payable to a platform contract holder if the minimum threshold amount is disclosed under § 23-66-807(e).

23-66-806. Reimbursement insurance policy.

(a) A reimbursement insurance policy insuring online marketplace guarantees sold or offered in this state shall clearly state that, upon failure of the provider to perform under the online marketplace guarantee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is obligated to pay according to such online marketplace guarantee.

(b)(1) A reimbursement insurance policy is subject to the laws and rules governing termination and nonrenewal of an insurance policy in this state.

(2) The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for online marketplace guarantees issued by providers before the effective date of the termination.

(c)(1) For purposes of § 23-64-207, a provider is considered to be the agent of the insurer which issued the reimbursement insurance policy.

(2) The insurer retains the right to seek indemnification or subrogation from the provider if the insurer pays or is obligated to pay sums to the platform contract holder that the provider was obligated to pay under the online marketplace guarantee.

(3) This subchapter does not prevent or limit the insurer's right in this regard.

23-66-807. Consumer protection disclosures.

(a) An online marketplace guarantee issued, sold, or offered for sale in this state shall be written in clear, understandable language and conspicuously disclose the requirements in this section, as applicable.

(b) An online marketplace guarantee insured under a reimbursement insurance policy under § 23-66-804(c)(1) shall contain a statement in substantially the following form:

"Obligations of the provider under this online marketplace guarantee are guaranteed under a reimbursement insurance policy. If the provider fails to pay or provide service on a claim within one hundred eighty (180) days after proof of loss has been filed, the platform contract holder is entitled to make a claim directly against the insurance company subject to the terms of the policy."

(c) An online marketplace guarantee not insured under a reimbursement insurance policy under § 23-66-804(c)(1) shall contain a statement in substantially the following form:

"Obligations of the provider under this online marketplace guarantee are not covered under a reimbursement insurance policy and are backed only by the provider (issuer)."

(d) If sold for separate consideration, online marketplace guarantees shall conspicuously state the total purchase price and the terms under which the online marketplace guarantee is sold before the sale.

(e) An online marketplace guarantee shall:

(1) Identify each provider obligated to provide payment for

claims under the contract or otherwise involved in the contract's issuance or sale;

(2) Conspicuously state the existence and amount of any damage recovery minimum threshold;

(3) Specify the services to be provided and any limitations, exceptions, or exclusions;

(4)(A) State any terms, restrictions, or conditions, including conditions governing transferability or conditions governing termination of the online marketplace guarantees by the platform contract holder.

(B) The provider of the online marketplace guarantee shall mail or email a written notice to the platform contract holder within thirty (30) days of the date of termination under subdivision (e)(4)(A) of this section; and

(5) Include a statement in substantially the following form: "This agreement is not an insurance contract."

(f) An online marketplace guarantee sold for separate consideration shall clearly and conspicuously state, at the time of sale, the applicable cancellation and refund policy.

23-66-808. Prohibited acts.

(a) A provider shall not make, permit, or cause to be made any false or misleading statement or deliberately omit any material statement that would be considered misleading if omitted in connection with the sale, offer to sell, or advertisement of an online marketplace guarantee.

(b) If an online marketplace guarantee is offered for separate consideration, a provider shall not require the purchase of an online marketplace guarantee as a condition of the use of the online marketplace's platform.

23-66-809. Enforcement provisions.

(a) When necessary or appropriate to enforce this subchapter and the Insurance Commissioner's rules and orders and to protect platform contract holders in this state, the commissioner may take action under § 23-61-103.

(b)(1) An online marketplace aggrieved by an order issued under this section may request a hearing before the commissioner under § 23-61-303.

(2) Pending a hearing requested under subdivision (b)(1) of this

section and the decision by the commissioner, the commissioner shall suspend the effective date of any order.

23-66-810. Rules.

The Insurance Commissioner may promulgate rules to implement and administer this subchapter including rules related to recordkeeping by a provider.

23-66-811. Severability.

If a provision of this subchapter or the application of this subchapter to a person or circumstances shall be held invalid, the remainder of this subchapter and the application of this subchapter to a person or circumstances other than those as to which it is held invalid shall not be affected.

/s/J. Boyd