

# Proposed Rulemaking

## Title Online Marketplace Guarantee Provider Registration Rule

### Promulgated by:

State Insurance Department

Title 23. Public Utilities and Regulated Industries

Chapter I. State Insurance Department, Department of Commerce

Subchapter A. Generally

Part 44. Online Marketplace Guarantee Provider Registration Rule

### **23 CAR § 44-101. Definitions.**

(a) Unless otherwise separately defined in this part, the terms or phrases as used in this part shall follow the definitions of such terms or phrases as defined in Arkansas Code § 23-66-803.

(b) As used in this part, "commissioner" means the Insurance Commissioner of the State of Arkansas.

### **23 CAR § 44-102. Application for certificate of registration.**

(a) Each applicant intending to sell or offer online marketplace guarantees in Arkansas shall:

- (1) Pay an application fee of one thousand dollars (\$1,000); and
- (2)(A) File an application for registration with the Insurance Commissioner using an online marketplace provider application form provided by the commissioner, and

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(B) Provide all documents deemed necessary by the commissioner to support the application.

(b) Within its application, an applicant shall submit documentation acceptable **certify** to the commissioner to demonstrate compliance with at least one (1) of **that it meets one or more of** the financial requirements provided at Arkansas Code § 23-66-804(c), as described below:

—— (1) If an applicant asserts compliance with Arkansas Code § 23-66-804(c)(1), the applicant shall:

(A) Provide the commissioner with a copy of its reimbursement insurance policy, which shall comply with the requirements of the Online Marketplace Guarantees Act, Arkansas Code § 23-66-801 et seq; and

(B) Certify that it will notify the commissioner of any material changes to that policy.

———— (2) If an applicant asserts compliance with Arkansas Code § 23-66-804(c)(2), the applicant shall provide documents showing that for at least thirty (30) days in any ninety-day period, it has maintained 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.

———— (3) If an applicant asserts compliance with Arkansas Code § 23-66-804(c)(3), it shall provide documents supporting its net cash balance or net worth by submitting:

(A) Its own financial statements, as described in Arkansas Code § 23-66-804(c)(3)(C); or

———— (B)(i) Financial statements of its parent company, as described in Arkansas Code § 23-66-804(c)(3)(C); and

(ii) Documentation of the parent company's agreement to guarantee the obligations of the applicant relating to online marketplace guarantees sold in Arkansas.

**23 CAR § 44-103. Issuance or denial of a certificate of registration.**

The Insurance Commissioner shall:

(1) Review the documentation submitted by an applicant, including any additional materials submitted upon request of the commissioner; and

(2)(A) Approve issuance of the certificate of registration to the applicant if the applicant meets the requirements of the Online Marketplace Guarantees Act and this part; or

(B) Deny the certificate of registration if the applicant fails to meet the requirements of the Online Marketplace Guarantees Act.

(i) The commissioner shall provide the basis for the denial within a written notice of denial.

(ii) If the applicant submits a written request for a hearing within thirty (30) days of receiving the notice of denial, the commissioner shall conduct a hearing in which the applicant shall be given an opportunity to demonstrate that its application meets the requirements of the Online Marketplace Guarantees Act and this part.

**23 CAR § 44-104. Renewal of a certificate of registration.**

(a)(1) A certificate of registration issued to an online marketplace guarantee provider shall expire one (1) year from the date of issuance provided on the certificate of registration unless the registration is successfully renewed.

(2) Thereafter, the certificate of registration shall expire annually on the anniversary of such date unless successfully renewed.

(b) At least thirty (30) days prior to expiration, each holder of a certificate of registration shall submit the following:

(1) An annual renewal fee of one thousand dollars (\$1,000); and

(2) A completed annual renewal form provided by the Insurance Commissioner notifying the commissioner of any material changes occurring the previous year.

(c) After receiving the items described in subsection(b) of this section, the commissioner shall:

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(1) Review the documentation submitted by the applicant and request any additional documentation to ensure the applicant complies with the Online Marketplace Guarantees Act and this part; and

(2)(A) Issue a renewal of the certificate of registration to the applicant; or

(B) Deny renewal of the certificate of registration if the applicant fails to meet the requirements of the Online Marketplace Guarantees Act or this part.

(i) The commissioner shall provide the basis for the denial within a written notice of denial.

(ii) If the applicant submits a written request for a hearing within thirty (30) days of receiving the notice of denial, the commissioner shall conduct a hearing in which the applicant shall be given an opportunity to demonstrate that its renewal application meets the requirements of the Online Marketplace Guarantees Act and this part.

### **23 CAR § 44-105. Recordkeeping requirements.**

(a) A provider shall:

(1) Keep accurate data and records concerning transactions regulated under the Online Marketplace Guarantees Act, and

(2) Make its data and records available to the Insurance Commissioner upon request.

(b) A provider shall keep:

(1) A copy of each type of online marketplace guarantee contract issued in Arkansas; and

(2) Records documenting the provider is able to ensure its faithful performance of its obligations to platform contract holders by satisfying at least one (1) of the financial requirements provided at Arkansas Code § 23-66-804(c).

(c) A provider shall retain all records pertaining to each online marketplace guarantee for at least three (3) years after the guarantee has expired.

(d) A provider discontinuing business in this state shall maintain its records until it furnishes the Insurance Commissioner satisfactory proof that it has discharged all obligations to platform contract holders in this state.

**23 CAR § 44-106. Prohibited acts.**

It is a violation of this part and the Online Marketplace Guarantees Act for a provider to engage in any act prohibited by Arkansas Code § 23-66-808 or to fail to comply with any other provision of the Online Marketplace Guarantees Act or this part.

**23 CAR § 44-107. Enforcement.**

(a) The Insurance Commissioner may conduct investigations or examinations of providers to enforce the provisions of the Online Marketplace Guarantees Act and this part.

(b) The commissioner may take any action that is necessary and appropriate to enforce the provisions of the Online Marketplace Guarantees Act and this part, including actions authorized by Arkansas Code § 23-61-103.

(c) Providers in violation of the Online Marketplace Guarantees Act or this part may be subject to the penalties described at Arkansas Code § 23-60-108.

1 State of Arkansas  
2 95th General Assembly  
3 Regular Session, 2025  
4

As Engrossed: S3/10/25

## A Bill

SENATE BILL 329

5 By: Senator J. Boyd  
6 By: Representative R. Burkes  
7

### For An Act To Be Entitled

9 AN ACT TO CREATE THE ONLINE MARKETPLACE GUARANTEES  
10 ACT; AND FOR OTHER PURPOSES.  
11

### Subtitle

12  
13 TO CREATE THE ONLINE MARKETPLACE  
14 GUARANTEES ACT.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 23, Chapter 66, is amended to add an  
20 additional subchapter to read as follows:  
21

#### Subchapter 8 – Online Marketplace Guarantees Act

##### 23-66-801. Title.

22  
23  
24 This subchapter shall be known and may be cited as the "Online  
25 Marketplace Guarantees Act".  
26

##### 23-66-802. Purposes.

27  
28 The purpose of this subchapter is to:  
29

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

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

36 (3) Encourage innovation in the marketing and development of



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

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

5  
6 23-66-803. Definitions.

7 As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

1 subject to the online marketplace's terms of service;

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

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

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

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

19  
20 23-66-804. Requirements for doing business.

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

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

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

28 (3) Complied with this subchapter.

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

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

36 (1) Insure all online marketplace guarantees under a

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

3 (2) For at least thirty (30) days in any ninety-day period,  
4 maintain a market capitalization of at least two hundred million dollars  
5 (\$200,000,000) on a securities exchange registered as a national securities  
6 exchange or a securities market regulated under the Securities Exchange Act  
7 of 1934, 15 U.S.C. §§ 78 et seq., as it existed on January 1, 2025, as  
8 reported by the national securities exchange at the close of each trading  
9 day; or

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

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

16 (C) Financial statements may include without limitation:

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

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

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

27  
28 23-66-805. Online marketplace guarantees.

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

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

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

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

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

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

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

12           (c) A provider may:

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

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

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

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

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

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27           23-66-806. Reimbursement insurance policy.

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

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

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

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

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

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

12  
13           23-66-807. Consumer protection disclosures.

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

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

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

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

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

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

35           (e) An online marketplace guarantee shall:

36           (1) Identify each provider obligated to provide payment for

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

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

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

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

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

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

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

19  
20 23-66-808. Prohibited acts.

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

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

29  
30 23-66-809. Enforcement provisions.

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

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

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

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

3  
4 23-66-810. Rules.

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

8  
9 23-66-811. Severability.

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

15  
16 */s/J. Boyd*

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18  
19 **APPROVED: 4/3/25**