

1 State of Arkansas
2 95th General Assembly
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4

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

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

22 Subchapter 8 – Online Marketplace Guarantees Act
23

24 23-66-801. Title.

25 This subchapter shall be known and may be cited as the "Online
26 Marketplace Guarantees Act".
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28 23-66-802. Purposes.

29 The purpose of this subchapter is to:

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; and

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

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

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

19 (iii) 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 (iv) Services 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.

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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.

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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.

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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.

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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.

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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.

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