

616 Fifth Avenue, Suite 106
Belmar, NJ 07719
732-201-4133
CHIEF EXECUTIVE OFFICER: Will Melofchik



PRESIDENT: Asw. Pamela Hunter, NY
VICE PRESIDENT: Sen. Paul Utke, MN
TREASURER: Rep. Edmond Jordan, LA
SECRETARY: Rep. Jim Dunnigan, UT

IMMEDIATE PAST PRESIDENT:
Rep. Tom Oliverson M.D., TX

National Council of Insurance Legislators (NCOIL)

Online Rental Home Marketplace Guarantees Model Act

**Sponsored by Rep. Brian Lampton (OH)*

**Co-sponsored by Rep. Forrest Bennett (OK)*

**Draft as of April 8, 2025~~June 14, 2024~~. To be discussed and potentially considered by the NCOIL Property & Casualty Insurance Committee on April 26, 2025~~July 20, 2024~~.*

Table of Contents

Section 1.	Title, Scope and Purposes
Section 2.	Definitions
Section 3.	Requirements For Doing Business
Section 4.	<u>Online Rental Home Marketplace Guarantees</u>
Section 5.	Reimbursement Insurance Policy
Section 6.	Consumer Protection <u>and</u> Disclosures
Section 7.	Prohibited Acts <u>Enforcement Provisions</u>
Section 8.	Enforcement Provisions <u>Authority to Develop Regulations</u>
Section 9.	Authority to Develop Regulations <u>Severability Provision</u>
Section 10.	Separability Provision

Section 1. Title, Scope and Purposes

A. This Act shall be known and cited as the Online Rental Home Marketplace Guarantees Act.

B. The purposes of this Act are to:

- (1) Create a legal framework within which ~~an online~~ rental home marketplace or its affiliates may offer ~~or sell an online~~ rental home marketplace guarantee in this state; and
- (2) Protect consumers by promoting transparency, fairness and accountability related to online rental home 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.~~

Drafting Note: States wishing to allow providers to obtain insurance policies providing group or blanket liability insurance coverage, business interruption or similar coverage to platform users may add language to expressly allow such coverage within the scope of this Act.

Section 2. Definitions

As used in this Act:

A. ~~{~~“Commissioner” means the commissioner of insurance of this state.~~}~~

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears. If the state desires that ~~online rental home marketplace~~ guarantees should ~~instead~~ be regulated by ~~the state attorney general~~ another regulator, a state should add insert language referencing ~~to that effect to ensure the appropriate regulator assignment of responsibilities.~~

B. “~~Online Rental home marketplace~~” means a person that meets each of the following criteria:

(1) 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 and that connects platform users to enable them to share property or perform services for other platform users through the same online platform.

(2) Provides, directly or indirectly, or maintains an online platform for services by performing any of the following:

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

(b) Owning or operating the electronic infrastructure or technology that brings two or more platform users together.

(3) If engaged in the ~~sale or~~ offering of online rental home marketplace guarantees, does so only in a manner that is ancillary to the conduct of its primary legitimate business or activity.

(4) Is not a local or state governmental entity ~~or vendor~~.

C. “~~Online Rental home marketplace~~ guarantee” means a contract or agreement issued in connection with ~~an online rental home marketplace~~, whether or not for a separate consideration, to guarantee reimburse a platform user’s for any damages for which another platform user is responsible under the rental home marketplace’s terms of service ~~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.

D. “Platform contract holder” means a platform user who is the beneficiary or holder of ~~an~~ online rental home marketplace guarantee.

E. “Platform user” means a user of ~~an online marketplace who is subject to the online marketplace’s terms of service.~~

EF. “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.

FG. “Provider” means (i) ~~an online rental home marketplace~~ or (ii) an affiliate or representative of ~~an online rental home marketplace~~, who issues, ~~makes, provides, sells or offers to sell~~ as well as administers, either directly or through a third party, ~~an online rental home marketplace~~ guarantee.

GH. “Reimbursement insurance policy” means a policy of insurance issued to a provider and pursuant to 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 rental home marketplace~~ guarantee in the event of default or non-performance by of the provider under the rental home marketplace guarantee.

I. ~~“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. Separate consideration does not include a revenue sharing agreement between the 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.~~

Section 3. Requirements For Doing Business

A. ~~An online rental home 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) M~~made the online rental home marketplace guarantee terms available on the provider’s website; and
- ~~(3) C~~complied with this Act.

B. All providers of ~~online rental home marketplace~~ guarantees ~~sold or~~ offered in this state shall file a registration with the 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 of the following requirements:~~

- ~~(1) I~~ insure all online rental home marketplace guarantees under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or issued pursuant to [insert code section permitting surplus lines business].
- ~~(2) For at least 30 days in any 90 day period, maintain a market capitalization of at least \$200 million 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 amended, as reported by such exchange at the close of each trading day.

~~(3) Maintain a net cash balance or net worth of at least \$50 million. Upon request, the provider or provider's parent company shall provide the commissioner with financial statements to support such net cash balance or net worth. Financial statements may include, but are not limited to (i) a Form 10-K or Form S-1 filed with the U.S. Securities and Exchange Commission ("SEC") within the last calendar year, including any amendments thereto, or (ii) a copy of the company's audited financial statements with a reporting date within the last calendar year. 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.~~

Section 4. Online Rental Home Marketplace Guarantees

~~A. Online Rental home marketplace guarantees do not constitute insurance and are not required to comply with any provision of the insurance laws of this state provided the provider has complied with this Act other than as expressly made applicable in this Chapter, provided the provider has registered with the commissioner as required by Section 3 of this Act.~~

~~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 [cite to state insurance code]:~~

Drafting Note: The intent of this model is to exclude the transaction of online marketplace guarantees and these related activities from any state licensing requirements for insurance carriers or intermediaries that would otherwise apply

~~(1) Marketing, providing, selling or offering to sell online marketplace guarantees in compliance with this Act.~~

~~(2) Determining amounts payable under online marketplace guarantees, including, with respect to claims made by platform contract holders, (i) investigating, negotiating or administering settlement of claims, or (ii) applying the factual circumstances of the claim to the online marketplace guarantee's terms.~~

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

~~C. A provider may (i) charge separate consideration for an online marketplace guarantee and (ii) provide varying levels of service and functionality depending on whether a platform user has paid separate consideration. Any separate consideration collected for online marketplace guarantees shall not be subject to premium taxes.~~

~~D. Nothing in this Act shall 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 provided that such minimum threshold amount is disclosed pursuant to Section 6.F of this Act.~~

Section 5. Reimbursement Insurance Policy

A. Reimbursement insurance policies insuring ~~online rental home~~ marketplace guarantees ~~sold or~~ offered in this state shall clearly state that, upon ~~failure~~ default or non-performance of the provider ~~to perform~~ under the ~~online rental home~~ 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 rental home~~ marketplace guarantee.

B. A reimbursement insurance policy shall be subject to the laws and regulations governing termination and non-renewal of insurance policies in this state or with [citation to specific statute]. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for ~~online rental home~~ marketplace guarantees issued by providers prior to the effective date of the termination.

C. For purposes of [insert citation to the law that obligates an insurer for the acts of its agents, including the collection of moneys not forwarded] a provider is considered to be the agent of the insurer ~~which that~~ issued the reimbursement insurance policy. 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 rental home~~ marketplace guarantee. This Act does not prevent or limit the insurer's right in this regard.

Section 6. Consumer Protection and Disclosures

A. ~~Online Rental home~~ marketplace guarantees ~~issued, sold or offered for sale in this state~~ shall be written in clear, understandable language and shall specify the terms, limitations, exceptions, conditions or exclusions, including conditions governing transferability or termination ~~conspicuously disclose the requirements in this section, as applicable.~~

B. ~~Online Rental home~~ marketplace guarantees ~~insured under a reimbursement insurance policy pursuant to Section 3.C(1) of this Act~~ shall contain a statement in substantially the following form: "Obligations of the provider ~~under this online marketplace guarantee~~ are guaranteed backed under a reimbursement insurance policy. If the provider is unable or fails to perform on its contractual obligation under a rental home marketplace guarantee ~~pay or provide service on a claim~~ within one hundred and eighty (180) days after proof of loss has been filed, ~~the a platform contract holder user~~ is entitled to make a claim directly against the insurance company subject to the terms of the policy."

C. ~~Online marketplace guarantees not insured under a reimbursement insurance policy pursuant to Section 3.C(1) of this Act~~ 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. Online marketplace guarantees shall identify each provider obligated to provide payment for claims under the contract or otherwise involved in the contract's issuance or sale.~~

~~E. 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 prior to the sale.~~

~~F. Online marketplace guarantees shall conspicuously state the existence and amount of any damage recovery minimum threshold.~~

~~G. Online marketplace guarantees shall specify the services to be provided and any limitations, exceptions or exclusions.~~

~~H. Online marketplace guarantees shall state any terms, restrictions or conditions, including conditions governing transferability or conditions governing termination of the online marketplace guarantees by the platform contract holder. 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.~~

~~I. Online marketplace guarantees sold for separate consideration shall clearly and conspicuously state, at the time of sale, the applicable cancellation and refund policy.~~

~~CJ. Rental home Online marketplace guarantees offered in this state shall include a statement in substantially the following form: "This ~~agreement~~ rental home marketplace guarantee is not an insurance contract."~~

D. 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 offer or advertisement of a rental home marketplace guarantee.

Section 7. 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.~~

Section 78. Enforcement Provisions

A. When necessary or appropriate to enforce the provisions of this Act and the commissioner's regulations and orders, and to protect platform contract holders in this state, the commissioner may take action under [insert citation to general enforcement power of commissioner].

B. A person aggrieved by an order issued under this Section 78 may request a hearing before the commissioner pursuant to [insert citation to statutes concerning hearings before the

commissioner]. Pending such hearing and the decision by the commissioner, the commissioner shall suspend the effective date of any such order.

Section 89. Authority to Develop Regulations

The commissioner may promulgate regulations that are not inconsistent with and are necessary to ~~administer and enforce the provisions of~~ effectuate this Act, ~~including regulations related to recordkeeping by providers.~~

Section 910. Severability~~Separability~~ Provision

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