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INTERIM STUDY PROPOSAL 2021-067
As Engrossed: H4/14/21 H4/19/21

A Bill

State of Arkansas
93rd General Assembly
Regular Session, 2021

SENATE BILL 332

By: Senator Irvin
By: Representative Dotson

Filed with: Arkansas Legislative Council
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

*AN ACT TO ESTABLISH THE PUBLIC HEALTH READINESS ACT;
TO IMPROVE THE ABILITY OF HOSPITAL FACILITIES OR
HOSPITAL-OWNED FACILITIES TO RESPOND IN A PANDEMIC;
TO REQUIRE MANUFACTURERS OF DIGITAL ELECTRONIC
EQUIPMENT USED BY HOSPITAL FACILITIES OR HOSPITAL-
OWNED FACILITIES TO MAKE AVAILABLE DOCUMENTS, PARTS,
AND SERVICE TOOLS; TO REQUIRE DISCLOSURE OF
INFORMATION IN CERTAIN CIRCUMSTANCES THAT IS
OTHERWISE PROHIBITED FROM BEING DISCLOSED; TO REQUIRE
A RECORD OF DETERMINATIONS; TO PROVIDE FOR MONETARY
PENALTIES FOR CERTAIN ACTIONS; TO PROVIDE FOR CIVIL
ACTION BY CERTAIN PERSONS; AND FOR OTHER PURPOSES.*

Subtitle

TO ESTABLISH THE PUBLIC HEALTH READINESS
ACT.

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

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an
additional subchapter to read as follows:

Subchapter 11 – Public Health Readiness Act

4-88-1101. Title.

1 This subchapter shall be known and may be cited as the "Public Health
2 Readiness Act".

3
4 4-88-1102. Legislative findings.

5 The General Assembly finds that:

6 (1) In order to protect public health, it is essential for
7 hospital facilities or hospital-owned facilities of this state to be able to
8 diagnose, service, and repair digital electronic equipment in a timely,
9 reliable, and affordable manner, whether or not the hospital facility or
10 hospital-owned facility owns, leases, or possesses a license for the digital
11 electronic equipment, to maximize the capacity of the hospital facility or
12 hospital-owned facility and for the safety and well-being of patients relying
13 upon those hospital facilities or hospital-owned facilities;

14 (2) In many instances, businesses or individuals impose
15 obstacles preventing hospital facilities or hospital-owned facilities from
16 making, or having another person make, the necessary diagnosis, service, and
17 repair of the hospital facility's or hospital-owned facility's digital
18 electronic equipment in the most timely, convenient, reliable, and affordable
19 manner;

20 (3) Hospital facilities or hospital-owned facilities should be
21 able to repair digital electronic equipment or choose among competing repair
22 providers to increase the speed of maintenance and repair of digital
23 electronic equipment they own, lease, or license in an effort to maximize the
24 capacity of a hospital facility or hospital-owned facility for the excessive
25 patient loads resulting from the coronavirus 2019 (COVID-19) pandemic;

26 (4) A hospital facility or hospital-owned facility in this state
27 should have the right to:

28 (A) Obtain all information and service tools necessary to
29 provide for the diagnosis, service, and repair of the hospital facility's or
30 hospital-owned facility's digital electronic equipment;

31 (B) Choose between original equipment parts and
32 aftermarket parts when repairing the hospital facility's or hospital-owned
33 facility's digital electronic equipment; and

34 (C) Make, or have another person of their choosing make,
35 necessary repairs to keep the hospital facility's or hospital-owned

1 facility's digital electronic equipment in good and serviceable condition
2 during the expected life span of the electronics; and

3 (5) The denial of access to information, service tools, and
4 parts required for diagnosis, service, and repair of digital electronic
5 equipment limits the choices for a hospital facility or hospital-owned
6 facility and causes unnecessary delays in repair of needed digital electronic
7 equipment, higher medical costs, and limitations on capacity.

8
9 4-88-1103. Definitions.

10 As used in this subchapter:

11 (1) "Authorized repair provider" means the following:

12 (A) An individual or business that is unaffiliated with an
13 original equipment manufacturer that has an arrangement with the original
14 equipment manufacturer, for a definite or indefinite period, under which the
15 original equipment manufacturer grants to the individual or business a
16 license to use a trade name, service mark, or other proprietary identifier
17 for the purposes of offering the services of diagnosis, maintenance, or
18 repair of digital electronic equipment under the name of the original
19 equipment manufacturer, or under other arrangements with the original
20 equipment manufacturer to offer such services on behalf of the original
21 equipment manufacturer; or

22 (B) An original manufacturer that:

23 (i) Provides diagnostic, maintenance, and repair
24 services for digital electronic equipment sold by the original equipment
25 manufacturer; and

26 (ii) Does not have an arrangement with an
27 unaffiliated individual or business;

28 (2) "Cellular phone" means a telephone or smartphone marketed to
29 the general public that has access to a cellular radio system so it can be
30 used over a wide area without a physical connection to a network;

31 (3) "Digital electronic equipment" means a product or part that
32 depends for its functioning, in whole or in part, on digital electronics
33 embedded in or attached to the product or part;

34 (4) "Documentation" means a manual, diagram, reporting output,
35 service code description, schematic diagram, or other similar kind of
36 information provided to an authorized repair provider for the purpose of

1 performing diagnostic, maintenance, or repair services on digital electronic
2 equipment;

3 (5) "Embedded software" means any programmable instructions
4 provided on firmware that is delivered with digital electronic equipment, or
5 with a part for digital electronic equipment, for the operation of the
6 digital electronic equipment, including any relevant maintenance patch, fix,
7 or upgrades made or provided by the original equipment manufacturer for these
8 purposes;

9 (6)(A) "Fair and reasonable terms" means the terms required to
10 obtain a part, tool, or documentation at a cost, including convenience of
11 delivery and of enabling functionality, including rights of use, equivalent
12 to the most favorable costs and terms offered by the original equipment
13 manufacturer to an authorized repair provider, using the net costs that would
14 be incurred by an authorized repair provider in obtaining an equivalent part,
15 tool, or documentation from the original equipment manufacturer, minus any
16 discounts, rebates, or other incentive programs in arriving at the actual net
17 costs.

18 (B) "Fair and reasonable terms" includes, for
19 documentation purposes, the providing of any relevant updates:

20 (i) At no charge if the documentation is delivered
21 electronically; or

22 (ii) For a reasonable fee that reflects the actual
23 costs of preparing and sending the documentation if a physical, printed copy
24 of the documentation is requested by an independent repair provider;

25 (7) "Firmware" means a software program or set of instructions
26 programmed on digital electronic equipment or on a part that allows the
27 digital electronic equipment or part to communicate with other computer
28 hardware;

29 (8) "Independent repair provider" means:

30 (A) An owner, individual, third-party vendor, or business
31 providing services to a *hospital facility or hospital-owned facility* in this
32 state that:

33 (i) Does not have an arrangement as an authorized
34 repair provider with an original equipment manufacturer;

1 (ii) Is not affiliated with an individual or
2 business that has an arrangement as an authorized repair provider with an
3 original equipment manufacturer; and

4 (iii) Provides diagnostic, maintenance, or repair
5 services for digital electronic equipment sold by the original equipment
6 manufacturer; or

7 (B) An original equipment manufacturer, authorized repair
8 provider, or affiliate of an authorized repair provider that is engaged in
9 diagnostic, maintenance, or repair services for digital electronic equipment
10 that is not manufactured by or sold under the name of the original equipment
11 manufacturer;

12 (9) "Internal combustion engine" means an engine that uses
13 gasoline, diesel, or natural gas to produce power;

14 (10) "Original equipment manufacturer" means a business engaged
15 in the business of selling or leasing new digital electronic equipment
16 manufactured by or on behalf of the business to an individual or another
17 business;

18 (11) "Owner" means an individual or business that owns, leases,
19 or licenses digital electronic equipment that is purchased or used at a
20 hospital facility or hospital-owned facility in this state;

21 (12) "Part" means a replacement part, new, used, or refurbished,
22 made available by an original equipment manufacturer to service, maintain, or
23 repair digital electronic equipment manufactured or sold by the original
24 equipment manufacturer;

25 (13) "Personal computer" means a general purpose, cost-effective
26 computer that is designed to be used by a single end-user and is dependent on
27 microprocessor technology;

28 (14) "Service tool" means any physical tool or software product
29 that is required for the full and complete operation, calibration, analysis,
30 or reprogramming of any digital electronic equipment manufactured or sold by
31 the original equipment manufacturer; and

32 (15) "Trade secret" means the same as defined in § 4-75-601.

33
34 4-88-1104. Requirements – Original equipment manufacturer.

35 (a)(1) If digital electronic equipment, including parts of digital
36 electronic equipment, is made available to a hospital facility or hospital-

1 owned facility in this state, then an original equipment manufacturer shall
2 make available to an independent repair provider or an owner of digital
3 electronic equipment sold by the original equipment manufacturer any
4 documentation, parts, or service tools, including any updates to the
5 information or embedded software, necessary for the purpose of diagnosing,
6 maintaining, or repairing digital electronic equipment or parts sold or used
7 in this state on fair and reasonable terms.

8 (2) This section does not require an original equipment
9 manufacturer to make available a part if the part is no longer available to
10 the original equipment manufacturer.

11 (b)(1) For purposes of this subchapter, if equipment is necessary to
12 repair that contains an electronic security lock or other security-related
13 function, then an original equipment manufacturer shall make available to an
14 owner or an independent repair provider any special documentation, parts, and
15 service tools needed to reset a lock or locking function that is disabled in
16 the course of diagnosing, maintaining, or repairing digital electronic
17 equipment on fair and reasonable terms.

18 (2) The documentation, tools, and parts may be made available
19 through an appropriate secure release system.

20
21 4-88-1105. Requirements – Hospital facility or hospital-owned
22 facility.

23 All service or repair work performed at a hospital facility or
24 hospital-owned facility on digital electronic equipment shall be performed by
25 a person possessing any licensing or certification required by law or rule
26 establishing standards of competency or qualification for the repair or
27 service of that specific digital electronic equipment.

28
29 4-88-1106. Violations of the Deceptive Trade Practices Act –
30 Enforcement.

31 (a) A violation of this subchapter is an unfair and deceptive act or
32 practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

33 (b) All remedies, penalties, and authority granted to the Attorney
34 General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be
35 available to the Attorney General for the enforcement of this subchapter.

1 (c) A violation of this subchapter shall not constitute a basis for
2 any private cause of action, and enforcement is limited solely at the
3 discretion of the Attorney General.

4
5 4-88-1107. Limitations.

6 This subchapter does not:

7 (1) Require an original equipment manufacturer to disclose a
8 trade secret;

9 (2)(A) Except as provided in subdivision (2)(B) of this section,
10 alter the terms of an arrangement between an authorized repair provider and
11 an original equipment manufacturer in force, including without limitation
12 terms concerning the performance or provision of warranty or recall repair
13 work by an authorized repair provider on behalf of an original equipment
14 manufacturer under the arrangement with an authorized repair provider.

15 (B) Terms of an arrangement of an authorized repair
16 provider and an original equipment manufacturer that purport to waive, avoid,
17 restrict, or limit the original equipment manufacturer's obligations to
18 comply with this subchapter are void; or

19 (3) Require an original equipment manufacturer or an authorized
20 repair provider to provide to an owner or independent repair provider access
21 to information, other than documentation, that is provided by the original
22 equipment manufacturer to an authorized repair provider under the terms of an
23 arrangement between an authorized repair provider and an original equipment
24 manufacturer.

25
26 4-88-1108. Exclusions.

27 This subchapter does not apply to:

28 (1) A piece of equipment that contains an internal combustion
29 engine;

30 (2) A personal computer;

31 (3) A cellular phone; or

32 (4) Fire alarm, fire sprinkler, fire suppression, and other fire
33 and life safety systems.

34 4-88-1109. Applicability.

35 This subchapter applies to digital electronic equipment sold or in use
36 on or after January 1, 2022.

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SECTION 2. EFFECTIVE DATE. This act is effective on and after January 1, 2022.

/s/ Irvin

Referred requested by the Arkansas Senate

Prepared by: MBM/KFW