

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H4/14/21

A Bill

SENATE BILL 332

5 By: Senator Irvin
6 By: Representative Dotson
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE PUBLIC HEALTH READINESS ACT;
10 TO IMPROVE THE ABILITY OF MEDICAL FACILITIES TO
11 RESPOND IN A PANDEMIC; TO REQUIRE MANUFACTURERS OF
12 DIGITAL ELECTRONIC EQUIPMENT USED BY MEDICAL
13 FACILITIES TO MAKE AVAILABLE DOCUMENTS, PARTS, AND
14 SERVICE TOOLS; TO REQUIRE DISCLOSURE OF INFORMATION
15 IN CERTAIN CIRCUMSTANCES THAT IS OTHERWISE PROHIBITED
16 TO BE DISCLOSED; TO REQUIRE A RECORD OF
17 DETERMINATIONS; TO PROVIDE FOR MONETARY PENALTIES FOR
18 CERTAIN ACTIONS; TO PROVIDE FOR CIVIL ACTION BY
19 CERTAIN PERSONS; AND FOR OTHER PURPOSES.
20

Subtitle

21
22
23 TO ESTABLISH THE PUBLIC HEALTH READINESS
24 ACT.
25

26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

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

31 Subchapter 11 – Public Health Readiness Act
32

33 4-88-1101. Title.

34 This subchapter shall be known and may be cited as the "Public Health
35 Readiness Act".
36



1 4-88-1102. Legislative findings.

2 The General Assembly finds that:

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

10 (2) In many instances, businesses or individuals impose
11 obstacles preventing medical facilities from making, or having another person
12 make, the necessary diagnosis, service, and repair of the medical facility's
13 digital electronic equipment in the most timely, convenient, reliable, and
14 affordable manner;

15 (3) Medical facilities should be able to repair digital
16 electronic equipment or choose among competing repair providers to increase
17 the speed of maintenance and repair of digital electronic equipment they own,
18 lease, or license in an effort to maximize the capacity of a medical facility
19 for the excessive patient loads resulting from the coronavirus 2019 (COVID-
20 19) pandemic;

21 (4) A medical facility in this state should have the right to:

22 (A) Obtain all information and service tools necessary to
23 provide for the diagnosis, service, and repair of the medical facility's
24 digital electronic equipment;

25 (B) Choose between original equipment parts and
26 aftermarket parts when repairing the medical facility's digital electronic
27 equipment; and

28 (C) Make, or have another person of their choosing make,
29 necessary repairs to keep the medical facility's digital electronic equipment
30 in good and serviceable condition during the expected life span of the
31 electronics; and

32 (5) The denial of access to information, service tools, and
33 parts required for diagnosis, service, and repair of digital electronic
34 equipment limits the choices for a medical facility and causes unnecessary
35 delays in repair of needed digital electronic equipment, higher medical
36 costs, and limitations on capacity.

1
2 4-88-1103. Definitions.

3 As used in this subchapter:

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

5 (A) An individual or business that is unaffiliated with an
6 original equipment manufacturer that has an arrangement with the original
7 equipment manufacturer, for a definite or indefinite period, under which the
8 original equipment manufacturer grants to the individual or business a
9 license to use a trade name, service mark, or other proprietary identifier
10 for the purposes of offering the services of diagnosis, maintenance, or
11 repair of digital electronic equipment under the name of the original
12 equipment manufacturer, or under other arrangements with the original
13 equipment manufacturer to offer such services on behalf of the original
14 equipment manufacturer; or

15 (B) An original manufacturer that:

16 (i) Provides diagnostic, maintenance, and repair
17 services for digital electronic equipment sold by the original equipment
18 manufacturer; and

19 (ii) Does not have an arrangement with an
20 unaffiliated individual or business;

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

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

27 (4) "Documentation" means a manual, diagram, reporting output,
28 service code description, schematic diagram, or other similar kind of
29 information provided to an authorized repair provider for the purpose of
30 performing diagnostic, maintenance, or repair services on digital electronic
31 equipment;

32 (5) "Embedded software" means any programmable instructions
33 provided on firmware that is delivered with digital electronic equipment, or
34 with a part for digital electronic equipment, for the operation of the
35 digital electronic equipment, including any relevant maintenance patch, fix,
36 or upgrades made or provided by the original equipment manufacturer for these

1 purposes;

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

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

13 (i) At no charge if the documentation is delivered
14 electronically; or

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

18 (7) "Firmware" means a software program or set of instructions
19 programmed on digital electronic equipment or on a part that allows the
20 digital electronic equipment or part to communicate with other computer
21 hardware;

22 (8) "Independent repair provider" means:

23 (A) An owner, individual, third-party vendor, or business
24 providing services to a medical facility in this state that:

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

27 (ii) Is not affiliated with an individual or
28 business that has an arrangement as an authorized repair provider with an
29 original equipment manufacturer; and

30 (iii) Provides diagnostic, maintenance, or repair
31 services for digital electronic equipment sold by the original equipment
32 manufacturer; or

33 (B) An original equipment manufacturer, authorized repair
34 provider, or affiliate of an authorized repair provider that is engaged in
35 diagnostic, maintenance, or repair services for digital electronic equipment
36 that is not manufactured by or sold under the name of the original equipment

1 manufacturer;

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

4 (10) "Original equipment manufacturer" means a business engaged
5 in the business of selling or leasing new digital electronic equipment
6 manufactured by or on behalf of the business to an individual or another
7 business;

8 (11) "Owner" means an individual or business that owns, leases,
9 or licenses digital electronic equipment that is purchased or used at a
10 medical facility in this state;

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

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

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

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

23
24 4-88-1104. Requirements – Original equipment manufacturer.

25 (a)(1) If digital electronic equipment, including parts of digital
26 electronic equipment, is made available to a medical facility in this state,
27 then an original equipment manufacturer shall make available to an
28 independent repair provider or an owner of digital electronic equipment sold
29 by the original equipment manufacturer any documentation, parts, or service
30 tools, including any updates to the information or embedded software,
31 necessary for the purpose of diagnosing, maintaining, or repairing digital
32 electronic equipment or parts sold or used in this state on fair and
33 reasonable terms.

34 (2) This section does not require an original equipment
35 manufacturer to make available a part if the part is no longer available to
36 the original equipment manufacturer.

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

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

10
11 4-88-1105. Requirements – Hospital facility or hospital-owned
12 facility.

13 All service or repair work performed at a hospital facility or
14 hospital-owned facility on digital electronic equipment shall be performed by
15 a person possessing any licensing or certification required by law or rule
16 establishing standards of competency or qualification for the repair or
17 service of that specific digital electronic equipment.

18
19 4-88-1106. Violations of the Deceptive Trade Practices Act –
20 Enforcement.

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

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

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

29
30 4-88-1107. Limitations.

31 This subchapter does not:

32 (1) Require an original equipment manufacturer to disclose a
33 trade secret;

34 (2)(A) Except as provided in subdivision (2)(B) of this section,
35 alter the terms of an arrangement between an authorized repair provider and
36 an original equipment manufacturer in force, including without limitation

1 terms concerning the performance or provision of warranty or recall repair
2 work by an authorized repair provider on behalf of an original equipment
3 manufacturer under the arrangement with an authorized repair provider.

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

8 (3) Require an original equipment manufacturer or an authorized
9 repair provider to provide to an owner or independent repair provider access
10 to information, other than documentation, that is provided by the original
11 equipment manufacturer to an authorized repair provider under the terms of an
12 arrangement between an authorized repair provider and an original equipment
13 manufacturer.

14
15 4-88-1108. Exclusions.

16 This subchapter does not apply to:

17 (1) A piece of equipment that contains an internal combustion
18 engine;

19 (2) A personal computer; or

20 (3) A cellular phone.

21
22 4-88-1109. Applicability.

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

25
26 SECTION 2. EFFECTIVE DATE. This act is effective on and after January
27 1, 2022.

28
29 */s/ Irvin*