

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H4/14/21 H4/19/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

SENATE BILL 332

4

5 By: Senator Irvin

6 By: Representative Dotson

7

8

For An Act To Be Entitled

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

21

22

23

Subtitle

24

TO ESTABLISH THE PUBLIC HEALTH READINESS
25 ACT.

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

29

30

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

32

Subchapter 11 – Public Health Readiness Act

33

34

4-88-1101. Title.

35

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



1
2 4-88-1102. Legislative findings.

3 The General Assembly finds that:

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

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

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

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

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

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

32 (C) Make, or have another person of their choosing make,
33 necessary repairs to keep the hospital facility's or hospital-owned
34 facility's digital electronic equipment in good and serviceable condition
35 during the expected life span of the electronics; and

36 (5) The denial of access to information, service tools, and

1 parts required for diagnosis, service, and repair of digital electronic
2 equipment limits the choices for a hospital facility or hospital-owned
3 facility and causes unnecessary delays in repair of needed digital electronic
4 equipment, higher medical costs, and limitations on capacity.

5
6 4-88-1103. Definitions.

7 As used in this subchapter:

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

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

19 (B) An original manufacturer that:

20 (i) Provides diagnostic, maintenance, and repair
21 services for digital electronic equipment sold by the original equipment
22 manufacturer; and

23 (ii) Does not have an arrangement with an
24 unaffiliated individual or business;

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

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

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

36 (5) "Embedded software" means any programmable instructions

1 provided on firmware that is delivered with digital electronic equipment, or
2 with a part for digital electronic equipment, for the operation of the
3 digital electronic equipment, including any relevant maintenance patch, fix,
4 or upgrades made or provided by the original equipment manufacturer for these
5 purposes;

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

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

17 (i) At no charge if the documentation is delivered
18 electronically; or

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

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

26 (8) "Independent repair provider" means:

27 (A) An owner, individual, third-party vendor, or business
28 providing services to a hospital facility or hospital-owned facility in this
29 state that:

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

32 (ii) Is not affiliated with an individual or
33 business that has an arrangement as an authorized repair provider with an
34 original equipment manufacturer; and

35 (iii) Provides diagnostic, maintenance, or repair
36 services for digital electronic equipment sold by the original equipment

1 manufacturer; or

2 (B) An original equipment manufacturer, authorized repair
3 provider, or affiliate of an authorized repair provider that is engaged in
4 diagnostic, maintenance, or repair services for digital electronic equipment
5 that is not manufactured by or sold under the name of the original equipment
6 manufacturer;

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

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

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

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

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

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

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

28

29 4-88-1104. Requirements – Original equipment manufacturer.

30 (a)(1) If digital electronic equipment, including parts of digital
31 electronic equipment, is made available to a hospital facility or hospital-
32 owned facility in this state, then an original equipment manufacturer shall
33 make available to an independent repair provider or an owner of digital
34 electronic equipment sold by the original equipment manufacturer any
35 documentation, parts, or service tools, including any updates to the
36 information or embedded software, necessary for the purpose of diagnosing,

1 maintaining, or repairing digital electronic equipment or parts sold or used
2 in this state on fair and reasonable terms.

3 (2) This section does not require an original equipment
4 manufacturer to make available a part if the part is no longer available to
5 the original equipment manufacturer.

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

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

15
16 4-88-1105. Requirements – Hospital facility or hospital-owned
17 facility.

18 All service or repair work performed at a hospital facility or
19 hospital-owned facility on digital electronic equipment shall be performed by
20 a person possessing any licensing or certification required by law or rule
21 establishing standards of competency or qualification for the repair or
22 service of that specific digital electronic equipment.

23
24 4-88-1106. Violations of the Deceptive Trade Practices Act –
25 Enforcement.

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

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

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

34
35 4-88-1107. Limitations.
36 This subchapter does not:

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

3 (2)(A) Except as provided in subdivision (2)(B) of this section,
4 alter the terms of an arrangement between an authorized repair provider and
5 an original equipment manufacturer in force, including without limitation
6 terms concerning the performance or provision of warranty or recall repair
7 work by an authorized repair provider on behalf of an original equipment
8 manufacturer under the arrangement with an authorized repair provider.

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

13 (3) Require an original equipment manufacturer or an authorized
14 repair provider to provide to an owner or independent repair provider access
15 to information, other than documentation, that is provided by the original
16 equipment manufacturer to an authorized repair provider under the terms of an
17 arrangement between an authorized repair provider and an original equipment
18 manufacturer.

19
20 4-88-1108. Exclusions.

21 This subchapter does not apply to:

22 (1) A piece of equipment that contains an internal combustion
23 engine;

24 (2) A personal computer;

25 (3) A cellular phone; or

26 (4) Fire alarm, fire sprinkler, fire suppression, and other fire
27 and life safety systems.

28 4-88-1109. Applicability.

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

31
32 SECTION 2. EFFECTIVE DATE. This act is effective on and after January
33 1, 2022.

34
35 /s/ Irvin