

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/14/21 H4/19/21
A Bill

SENATE BILL 332

By: Senator Irvin
By: Representative Dotson

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.

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



4-88-1102. Legislative findings.The General Assembly finds that:

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

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

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

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

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

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

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

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

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

4-88-1103. Definitions.

As used in this subchapter:

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

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

(B) An original manufacturer that:

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

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

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

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

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

(5) "Embedded software" means any programmable instructions

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

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

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

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

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

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

(8) "Independent repair provider" means:

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

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

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

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

manufacturer; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-88-1107. Limitations.

This subchapter does not:

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

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

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

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

4-88-1108. Exclusions.

This subchapter does not apply to:

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

(2) A personal computer;

(3) A cellular phone; or

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

4-88-1109. Applicability.

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

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

/s/Irvin