

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1780

By: Representative S. Meeks

For An Act To Be Entitled

AN ACT CONCERNING CYBERSECURITY INSURANCE; TO ALLOW THE INSURANCE COMMISSIONER TO REGULATE CYBERSECURITY INSURANCE; TO REQUIRE COVERAGE FOR CYBERSECURITY INCIDENTS; TO ESTABLISH THE ARKANSAS SELF-FUNDED CYBER RESPONSE PROGRAM AND THE ARKANSAS CYBER RESPONSE BOARD; TO CREATE THE ARKANSAS SELF-FUNDED CYBER RESPONSE PROGRAM TRUST FUND; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING CYBERSECURITY INSURANCE; TO ESTABLISH THE ARKANSAS SELF-FUNDED CYBER RESPONSE PROGRAM AND THE ARKANSAS CYBER RESPONSE BOARD; AND TO CREATE THE ARKANSAS SELF-FUNDED CYBER RESPONSE PROGRAM TRUST FUND.

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

SECTION 1. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1158. Arkansas Self-Funded Cyber Response Program Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Self-Funded Cyber Response Program Trust Fund".

(b) The fund shall consist of:

(1) All moneys received by the Arkansas Cyber Response Board for



the Arkansas Self-Funded Cyber Response Program, including:

(A) Premiums collected by the Arkansas Cyber Response Board under this subchapter; and

(B) Restitution, interest payments, grants, gifts, and refunds; and

(2) All income derived through investment of the fund.

(c)(1) The funds shall be administered by and disbursed at the direction of the Arkansas Cyber Response Board.

(2) Moneys shall not be appropriated from the fund for any purpose except for:

(A) The use and benefit of participating governmental entities for claims; and

(B) Expenses of the Arkansas Cyber Response Board, including without limitation travel expenses, actuarial fees, consultant expenses, and service contract fees.

(3) The assets of the fund may be invested and reinvested as the Arkansas Cyber Response Board may determine with the advice of the State Board of Finance.

(4) For the purposes of investment, fund moneys invested and interest earned on fund moneys invested shall be administered as trust funds under the State Treasury Management Law, § 19-3-501 et seq.

(5) All moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment.

SECTION 2. Arkansas Code Title 21, Chapter 2, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Arkansas Self-Funded Cyber Response Program Act

21-2-801. Title.

This subchapter shall be known and may be cited as the "Arkansas Self-Funded Cyber Response Program Act".

21-2-802. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The counties, municipalities, and school districts of this

state are increasingly targeted by cyberattacks from malicious actors resulting in substantial risks, damages, and losses;

(2) The cost to purchase cybersecurity insurance for coverage of the risks, damages, and losses suffered during a cyberattack is too burdensome for a city, county, or school district; and

(3) Considerable savings might be effected by the establishment of a self-funded cyber response program for a cyberattack committed against the counties, municipalities, and school districts of this state and their respective public officials and public employees.

(b) By enacting this subchapter, the General Assembly intends to:

(1) Establish the Arkansas Self-Funded Cyber Response Program for participating governmental entities and to establish the Arkansas Cyber Response Board to administer the program; and

(2) Provide that the program is in lieu of, or in addition to, various cybersecurity insurance policies and to thereby effectuate substantial savings in the cost of a response to a cyberattack for those participating governmental entities.

21-2-803. Definitions.

As used in this subchapter:

(1) "County" means any county of this state;

(2) "Cyber response contact" means a person or entity designated by the Arkansas Cyber Response Board to be the initial contact for a participating governmental entity that is the subject of a cyberattack;

(3)(A) "Cyber response panel" means a group of entities, each of which has been procured through state procurement and approved by the board, which can be activated by the cyber response contact to assist the participating governmental entity with forensic analysis, restoration guidance, and other board-authorized assistance following a cyberattack.

(B) "Cyber response panel" may include an entity that is owned or managed by the government;

(4) "Higher education entity" means a:

(A) State-supported college, university, technical college, community college, or other institution of higher education; or

(B) Department, division, or agency of a state institution of higher education;

(5) "Money" means:

(A) Currency, coins, and bank notes in current use and having a face value; and

(B) Travelers' checks, register checks, and money orders held for sale to the general public;

(6) "Municipality" means:

(A) A city of the first class;

(B) A city of the second class; or

(C) An incorporated town;

(7) "Participating governmental entity" means a:

(A) County;

(B) Municipality; or

(C) School district;

(8) "Property other than money and securities" means any tangible property, other than money and securities, that has intrinsic value; and

(9) "School district" means a school district or open-enrollment public charter school in this state.

21-2-804. Arkansas Self-Funded Cyber Response Program – Establishment – Scope of program coverage.

(a)(1) There is established the Arkansas Self-Funded Cyber Response Program to provide coverage for cybersecurity incidents and risks, damages, or losses caused by a cyberattack that are committed against a participating governmental entity.

(2) The program shall be administered by the Arkansas Cyber Response Board.

(3) All municipalities, counties, and school districts in this state shall participate in the program.

(b)(1) Program coverage shall include actual losses, including without limitation repairing hardware and software damage sustained by a participating governmental entity, to an amount not to exceed the lesser of:

(A) One hundred thousand dollars (\$100,000); or

(B) A maximum amount of cyber response coverage for cyberattacks based on minimum cybersecurity standards as established by the

board.

(2) Program coverage for loss of property other than money and securities is limited to the actual cash value of the property on the day that the loss was discovered.

(3) Program coverage shall not be provided for a claim in which a participating governmental entity, through fraudulent means, takes money or other property from another participating governmental entity.

(c)(1) The board shall establish minimum cybersecurity criteria for participating governmental entities.

(2) A participating governmental entity shall have twelve (12) months to become compliant with the minimum cybersecurity criteria established under subdivision (c)(1) of this section.

(3) The minimum cybersecurity criteria established by the board under subdivision (c)(1) of this section may differ between varying types and sizes of participating governmental entities.

(4)(A) Failure to comply with the minimum cybersecurity criteria established by the board under subdivision (c)(1) of this section may result in the board's establishing lower program coverage amounts under subdivision (b)(1) of this section.

(B) The minimum program coverage shall not include:

(i) Compensatory damages;

(ii) Punitive damages;

(iii) Exemplary damages;

(iv) Payment of a ransom demand; or

(v) Any interest or penalty amounts that accrue on a claim made under this subchapter.

(d) Program coverage shall not include a loss sustained by a participating governmental entity as a result of liability imposed upon or assumed by the participating governmental entity to exonerate or indemnify a public official or public employee from or against liability incurred by the public official or public employee in the performance of his or her duties.

(e) A participating governmental entity is legally liable for damages as a result of:

(1) The deprivation or violation of a civil right of an individual by a public official or public employee; or

(2) The tortious conduct of a public official or public

employee.

(f) Program coverage shall not include a loss sustained by a party other than a participating governmental entity.

(g)(1) To sustain program coverage, a participating governmental entity, including each segment or component of the participating governmental entity for which coverage is available under the program, shall procure an audit of its books and records for each fiscal year, including an information systems audit, review, or assessment performed by Arkansas Legislative Audit.

(2)(A) If a participating governmental entity or covered component of the participating governmental entity is not audited by Arkansas Legislative Audit, then the participating governmental entity or covered component of the participating governmental entity shall procure an audit, review, or assessment of its books, records, and information systems by an accountant in good standing with the Arkansas State Board of Public Accountancy according to government auditing standards issued by the Comptroller General of the United States.

(B) The audit, review, or assessment under subdivision (g)(2)(A) of this section shall be completed within eighteen (18) months of the close of each participating governmental entity's fiscal year.

21-2-805. Arkansas Cyber Response Board.

(a)(1) There is created the Arkansas Cyber Response Board, which shall be composed of the following members:

(A)(i) Three (3) members appointed by the Governor, one one (1) of whom shall represent counties, and one (1) of whom shall represent municipalities.

(ii)(a) In addition to the three (3) members appointed by the Governor under subdivision (a)(1)(A)(i) of this section:

(1) The Governor shall appoint one (1) member if the State of Arkansas joins the Arkansas Self-Funded Cyber Response Program; and

(2) The Governor shall appoint one (1) member if a higher education entity joins the program.

(b) If the Governor appoints members under subdivision (a)(1)(A)(ii)(a) of this section, the Chair of the Arkansas Cyber Response Board shall notify the Legislative Council and the Director of the

Bureau of Legislative Research of the additional appointments;

(B) The Secretary of the Department of Education or his or her designee;

(C) The Director of the Division of Information Systems or his or her designee;

(D) The Director of the Division of Emergency Management or his or her designee;

(E) One (1) staff member of Legislative Audit who is designated by the Legislative Auditor; and

(F) The Insurance Commissioner or his or her designee.

(2) The member under subdivision (a)(1)(F) of this section shall be a nonvoting board member.

(3) The commissioner shall serve as the Chair of the Arkansas Cyber Response Board and call the first meeting no later than thirty (30) days after the effective date of this act.

(4) Members of the board that are appointed by the Governor shall serve a term of (6) years.

(b) The board shall:

(1)(A) Establish a definition of a cyberattack that will be covered under the Arkansas Self-Funded Cyber Response Program based on industry standards.

(B) The definition of a cyberattack established under subdivision (b)(1)(A) of this section shall be reviewed annually and updated as necessary by the board;

(2) Establish minimum cybersecurity standards for participating governmental entities;

(3) Determine a maximum amount of program coverage, not to exceed fifty thousand dollars (\$50,000), for participating governmental entities that have not met the minimum cybersecurity standards established by the board under this section;

(4) Create a cyber response panel;

(5)(A) Designate a cyber response contact.

(B) The cyber response contact may select an entity from the cyber response panel to assist with forensic analysis, restoration guidance, and other board-authorized assistance to the participating governmental entity.

(C) The cyber response contact shall provide to the board:
(i) Prompt notice detailing the cyberattack; and
(ii) A detailed report of the action that is being
taken;

(6) Promulgate rules and procedures regarding utilization of the
program by participating governmental entities to generally align with the
following procedures:

(A) Upon discovery of a cyberattack, a participating
governmental entity shall notify the cyber response contact designated by the
board;

(B)(i) The cyber response contact shall make a
determination of program coverage in consultation with the board, if
feasible.

(ii) If consultation with the board is not feasible
under subdivision (b)(6)(B)(i) of this section due to the timing of the
cyberattack, then the cyber response contact shall review and evaluate
criteria established by the board to make a determination of program
coverage.

(C) The cyber response contact shall notify the board once
the cyber response contact has made a determination of program coverage; and

(D) Any other procedures that the board deems necessary to
carry out this subchapter.

(c)(1) Board members shall receive no compensation for their services,
but members other than the Secretary of the Department of Education, the
Director of the Division of Information Systems, the Director of the Division
of Emergency Management, the staff member of Legislative Audit, the board
member appointed by the Governor, and the commissioner may receive expense
reimbursement under § 25-16-901 et seq.

(2) The expense reimbursement of board members shall be paid
from the Arkansas Self-Funded Cyber Response Program Trust Fund.

(d)(1) The board shall meet at least quarterly.

(2) If there is no proof of loss or other business for the board
to consider, the chair may cancel a regularly scheduled quarterly meeting
upon written notice to the board members.

(3) The board shall also meet at any other time as necessary to
carry out its responsibilities and duties, at the call of the chair, or upon

the request of a majority of the board.

(4) The board may meet in person or virtually at the determination of the chair.

(5) All action of the board shall be by majority vote of the membership in attendance.

(6)(A) If a board member is unable to attend any board meeting, the board member shall appoint a designee to act as his or her representative.

(B) The representative under subdivision (d)(6)(A) of this section shall have all the rights and privileges of the board member represented.

(e)(1) Due to the potential threat to the security of participating governmental entities, all meetings, documents, and records, except financial records, shall be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The financial records of the fund shall not be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) However, all meetings, documents, records, and policy decisions shall be subject to review by the Joint Committee on Advanced Communications and Information Technology during a closed meeting.

(f) The board shall prepare and submit an annual report to the Joint Committee on Advanced Communications and Information Technology concerning cyberattacks on participating governmental entities.

(g) The board shall:

(1) Administer the fund; and

(2) Notify, in a timely manner, the cochairs of the Joint Committee on Advanced Communications and Information Technology of any payments made to a government entity of thirty-five thousand dollars (\$35,000) or greater due to a cyberattack incidence.

21-2-806. Operations and recommendations.

(a) At the direction of the Arkansas Cyber Response Board, the Insurance Commissioner shall receive and disburse funds necessary for the establishment and operation of the Arkansas Self-Funded Cyber Response Program.

(b) The State Risk Manager shall assist in the operations of the

program and shall submit to the board recommendations for:

(1)(A) Premium schedules for all participating governmental entities, not to exceed a total of nine hundred thousand dollars (\$900,000) in each of the first two (2) years of operation.

(B) The premium schedule for each participating governmental entity for the first two (2) years of operation shall be as follows:

(i) The aggregate amount for municipalities shall not exceed three hundred thousand dollars (\$300,000);

(ii) The aggregate amount for counties shall not exceed three hundred thousand dollars (\$300,000); and

(iii) The aggregate amount for school districts shall not exceed three hundred thousand dollars (\$300,000);

(2) Schedules for deductible amounts;

(3) Loss histories, loss reporting, and loss payment procedures;

(4) Program enrollments;

(5) Annual review of funds, income, balances, and expenditures;

and

(6) Other information required by the board for efficient operation of the program.

(c) The board may utilize up to five percent (5%) of the monthly premiums remitted to the Arkansas Self-Funded Cyber Response Program Trust Fund for administrative expenses and staff.

(d) Additional money may be provided to the program through grants and provisions from public and private entities.

21-2-807. Notice of proof of losses – Determination of coverage and remediation.

(a) Following a cyberattack on a participating governmental entity, the Arkansas Cyber Response Board may establish security requirements for the participating governmental entity that shall be followed in order to maintain the full Arkansas Self-Funded Cyber Response Program under § 21-2-804(b)(1).

(b) The expenses associated with losses, investigation, and remediation shall be attributed to the participating governmental entity and shall be used by the State Risk Manager and board in calculating future program premiums.

(c)(1) Upon determination of proof of loss from the cyber response contact and the board, the Insurance Commissioner shall authorize cybersecurity loss payments to the participating governmental entity that was activated by the cyber response contact as well as any participating governmental entity for board-approved expenditures.

(2) A voucher for a loss payment shall include, as supporting documents, a copy of the payment recommendations by the State Risk Manager and a copy of the proof of loss provided by the participating governmental entity and approved by the board.

(3) A loss payment may be adjusted by any applicable deductible, restitution, or coinsurance payment by the board.

(d)(1) If a participating governmental entity sustains any loss that exceeds the amount of indemnity provided by the program, then the participating governmental entity is entitled to all recoveries, except from suretyship, insurance, reinsurance, security, or indemnity taken by or for the benefit of the program, made by whomever, on account of the loss until fully reimbursed, less the amount of the deductible and coinsurance.

(2) Any remainder of the recovery under subdivision (d)(1) of this section shall be applied to reimbursement of the program.

(3) If a participating governmental entity fails to pay the amount due to the program under this section, then the board may deduct any amount due from future loss payments due the applicable participating governmental entity or from any treasury funds of the applicable participating governmental entity.

21-2-808. Billing certification – Payment and deposit.

(a) Beginning on and after July 1, 2024, the Arkansas Cyber Response Board, with the assistance of the Insurance Commissioner, shall prepare a billing certification to be remitted to the:

- (1) Department of Finance and Administration; and
- (2) Chief Fiscal Officer of the State.

(b)(1) Upon receipt of the billing certification, the Secretary of the Department of Finance and Administration shall pay the billing certification from funds specifically appropriated for the billing certification by the General Assembly or from other funds available to pay for the billing certification.

(2) Funds appropriated for premiums for Arkansas Self-Funded Cyber Response Program coverage, or funds otherwise made available for this purpose, shall not be subject to reduction as a result of any shortfall of projected revenues.

(c) Upon receipt of the billing certification under this section, the Chief Fiscal Officer of the State shall pay the billing certification from funds withheld from the:

(1) County Aid Fund that are due each county participating in the program for premiums for county public officials and public employees;

(2) Municipal Aid Fund that are due each municipality participating in the program for premiums for municipal public officials and public employees; and

(3) Public School Fund that are due each school district participating in the program for premiums for school district officials and school district employees.

(d) Upon receipt of the funds under this section, the commissioner shall deposit the funds into the Arkansas Self-Funded Cyber Response Program Trust Fund.

21-2-809. Future enrollment – State of Arkansas and higher education entity.

(a) The Arkansas Self-Funded Cyber Response Program shall be open to the State of Arkansas or a higher education entity to join at any time.

(b) Beginning on the date that the State of Arkansas or a higher education entity joins the program, the Arkansas Cyber Response Board, with the assistance of the Insurance Commissioner, shall prepare a billing certification to be remitted to the:

(1) Department of Finance and Administration; and

(2) Chief Fiscal Officer of the State.

(c)(1) Upon receipt of the billing certification, the Secretary of the Department of Finance and Administration shall pay the billing certification from funds specifically appropriated for the billing certification by the General Assembly or from other funds available to pay for the billing certification.

(2) Funds appropriated for premiums for program coverage, or funds otherwise made available for this purpose, shall not be subject to

reduction as a result of any shortfall of projected revenues.

(d) Upon receipt of the funds under this section, the commissioner shall deposit the funds into the Arkansas Self-Funded Cyber Response Program Trust Fund.