

SUBSTITUTE FOR  
SENATE BILL NO. 1032

A bill to amend 1994 PA 55, entitled  
"Confidential research information act,"  
by amending the title and sections 1 and 2 (MCL 390.1551 and  
390.1552) and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to protect from public disclosure certain information  
3 obtained in research and related activities of public  
4 universities and colleges; **to protect from public disclosure**  
5 **certain investment information received by a public university or**  
6 **college from an investment fiduciary or portfolio company;** and to  
7 prescribe certain duties of public universities and colleges.

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Sec. 1. This act shall be known and may be cited as the  
9 "confidential research **and investment** information act".

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Sec. 2. As used in this act:

1 (a) "Commercial information" means information regarding the  
2 purchase and sale of goods and services, including, but not  
3 limited to, information regarding marketing strategy, production  
4 data, assessments of goods and services, mineral exploration  
5 records, and compilations of data regarding commercial activity.

6 (b) "Financial information" means information regarding  
7 finances, including, but not limited to, assets, income,  
8 liabilities, net worth, bank balances, financial history or  
9 activities, or creditworthiness.

10 (c) "Intellectual property" means all original data,  
11 findings, or other products of the mind or intellect commonly  
12 associated with claims, interests, and rights that are protected  
13 under trade secret, patent, trademark, copyright, or unfair  
14 competition law.

15 (d) "Investment" means the utilization of money or other  
16 assets in the expectation of future returns in the form of income  
17 or capital gain.

18 (e) "Investment fiduciary" means a person who exercises any  
19 discretionary authority or control over an investment of a public  
20 university or college or renders investment advice for a public  
21 university or college for a fee or other direct or indirect  
22 compensation.

23 (f) "Investment information" means information that has not  
24 been publicly disseminated or that is unavailable from other  
25 sources, the release of which might cause a portfolio company or  
26 an investment fiduciary significant competitive harm. Investment  
27 information includes, but is not limited to, financial

1 performance data and projections, financial statements, list of  
2 coinvestors and their level of investment, product and market  
3 data, rent rolls, and leases.

4 (g) "Portfolio company" means an entity in which an  
5 investment fiduciary has made or considered an investment on  
6 behalf of a public university or college.

7 (h) ~~(d)~~ "Public university or college" means a university,  
8 college, or community college ~~described in~~ **established under**  
9 section ~~4,~~ 5, 6, or 7 of article VIII of the state constitution  
10 of 1963. ~~or any institution of higher education established by~~  
11 ~~the state after the effective date of this act.~~

12 (i) "Record" means all or part of a writing, as that term is  
13 defined in section 2 of the freedom of information act, 1976 PA  
14 442, MCL 15.232.

15 (j) ~~(e)~~ "Trade secret" means information consisting of a  
16 valuable unpatented formula, pattern, device, or process, or  
17 other information that is used in a business and gives the  
18 possessor of the information a competitive advantage over those  
19 who do not know or use the information, and for which sufficient  
20 measures have been taken to guard the secrecy of the information  
21 and preserve its confidentiality, and that does not encompass  
22 information that is readily ascertainable by competitors or the  
23 general public without undue difficulty or hardship.

24 **Sec. 4a. (1) Subject to subsection (2), a record received,**  
25 **prepared, used, or retained by an investment fiduciary in**  
26 **connection with an investment or potential investment of a public**  
27 **university or college that relates to investment information**

1 pertaining to a portfolio company in which the investment  
2 fiduciary has invested or has considered an investment that is  
3 considered by the portfolio company and acknowledged by the  
4 investment fiduciary as confidential, or that relates to  
5 investment information whether prepared by or for the investment  
6 fiduciary regarding loans and assets directly owned by the  
7 investment fiduciary and acknowledged by the investment fiduciary  
8 as confidential, is exempt from the disclosure requirements of  
9 the freedom of information act, 1976 PA 442, MCL 15.231 to  
10 15.246, if at least annually the public university or college  
11 provides to its governing board, and makes available to the  
12 public, a report of its investments that includes all of the  
13 following:

14 (a) The name of each portfolio company in which the public  
15 university or college invested during the reporting period.

16 (b) The aggregate amount of money invested by the public  
17 university or college in portfolio companies during the reporting  
18 period.

19 (c) The rate of return realized during the reporting period  
20 on the investments of the public university or college in  
21 portfolio companies.

22 (d) The source of any public funds invested by the public  
23 university or college in portfolio companies during the reporting  
24 period.

25 (2) If a record described in subsection (1) is an agreement  
26 or instrument to which an investment fiduciary is a party, only  
27 those parts of the record that contain investment information are

1 exempt from the disclosure requirements of the freedom of  
2 information act, 1976 PA 442, MCL 15.231 to 15.246.