

Act No. 86
Public Acts of 2004
Approved by the Governor
April 22, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

**Introduced by Senators Garcia, George, Bishop, Allen, Cherry, Olshove, Goschka, Kuipers, Toy, Schauer
and McManus**

ENROLLED SENATE BILL No. 1032

AN ACT to amend 1994 PA 55, entitled "An act to protect from public disclosure certain information obtained in research and related activities of public universities and colleges; and to prescribe certain duties of public universities and colleges," 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:

TITLE

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

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

Sec. 2. As used in this act:

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

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

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

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

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

(f) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive

harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

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

(h) "Public university or college" means a university, college, or community college established under section 5, 6, or 7 of article VIII of the state constitution of 1963.

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

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

Sec. 4a. (1) Subject to subsection (2), a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of a public university or college that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential, or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential, is exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, if at least annually the public university or college provides to its governing board, and makes available to the public, a report of its investments that includes all of the following:

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

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

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

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

(2) If a record described in subsection (1) is an agreement or instrument to which an investment fiduciary is a party, only those parts of the record that contain investment information are exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor