



# SENATE BILL No. 857

September 28, 1993, Introduced by Senators SCHWARZ, EHLERS, WARTNER, GAST and POLLACK and referred to the Committee on Education.

A bill to protect from public disclosure certain information concerned with research and related activities of public universities and colleges; and to prescribe certain duties of public universities and colleges.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 2. As used in this act:

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

9       (b) "Financial information" means information regarding  
10 finances, including, but not limited to, assets, income,

1 liabilities, net worth, bank balances, financial history or  
2 activities, or creditworthiness.

3 (c) "Intellectual property" means all original data, find-  
4 ings, or other products of the mind or intellect commonly associ-  
5 ated with claims, interests, and rights that are protected under  
6 trade secret, patent, trademark, copyright, or unfair competition  
7 law.

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

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

22 Sec. 3. (1) Except as otherwise provided in this section,  
23 trade secrets, commercial information, or financial information,  
24 including that information as it relates to computer hardware and  
25 software, that is provided to a public university or college by a  
26 private external source and that is in the possession of the  
27 public university or college in the performance of a lawful

1 function is exempt from disclosure as a public record under the  
2 freedom of information act, Act No. 442 of the Public Acts of  
3 1976, being sections 15.231 to 15.246 of the Michigan Compiled  
4 Laws, if all of the following conditions are met:

5 (a) The information is used exclusively for research, test-  
6 ing, evaluation, and related activities.

7 (b) The information is clearly designated by the external  
8 source before or at the time it is received by the public univer-  
9 sity or college as being confidential.

10 (c) The public university or college has entered into an  
11 agreement to keep the information confidential, and the confiden-  
12 tiality agreement was authorized by the chief administrative  
13 officer of the public university or college, or his or her  
14 designee.

15 (d) A document containing a general description of the  
16 information to be received under the confidentiality agreement,  
17 the term of the confidentiality agreement, the name of the exter-  
18 nal source or person with whom the confidentiality agreement was  
19 made, and a general description of the nature of the intended use  
20 for the information is recorded by the public university or col-  
21 lege within 20 regular working days after it is received, is  
22 maintained in a central place within the public university or  
23 college, and is made available to a person upon request.

24 (2) Subsection (1) does not apply to information that meets  
25 both of the following:

26 (a) Is otherwise publicly available.

1 (b) Is submitted as required by law or as a condition of  
2 receiving a government contract, license, or other benefit.

3 (3) To the extent that the information indicates a substan-  
4 tial likelihood that a person may be killed or injured by the use  
5 of the product or process, a public university or college has an  
6 affirmative duty to take reasonable measures to promptly notify  
7 appropriate local, state, and federal regulatory agencies of  
8 information regarding a product or process that is in the stream  
9 of commerce at the time the public university or college receives  
10 the information or actively uses the information in its  
11 research. The affirmative duty described in this subsection is  
12 not intended to and does not create a separate or additional  
13 liability or cause of action outside of the penalties provided  
14 for in Act No. 442 of the Public Acts of 1976. A provision of a  
15 contract between a public university or college and another  
16 person that conflicts with this subsection is void for the pur-  
17 poses of this act as a matter of public policy. However, the  
18 affirmative duty described in this subsection does not apply to  
19 information described in this subsection if 1 or more of the fol-  
20 lowing apply:

21 (a) There already exists a duty upon the manufacturer, dis-  
22 tributor, seller, or owner of the product or process to disclose  
23 the information to a regulatory agency and the public university  
24 or college does not have actual knowledge that the information  
25 has not been disclosed in accordance with that duty.

26 (b) The hazards of the product or process are obvious to the  
27 user or consumer.

1 (c) The hazards of the product or process are disclosed to  
2 the user or consumer in recommendations, warnings, or other  
3 instructions supplied to the user or consumer by the manufactur-  
4 er, distributor, seller, or owner of the product or process.

5 (4) To the extent that the information and its commercial  
6 value are subject to copyright, patent, or trademark protection,  
7 subsection (1) does not apply to information regarding a product  
8 or process if the public university or college is selling or mar-  
9 keting the product or process to the general public.

10 Sec. 4. (1) Except as otherwise provided in this section,  
11 the following information in which a public university or college  
12 holds an interest, or that is owned, prepared, used, or retained  
13 by, or in the possession of, a public university or college, is  
14 exempt from disclosure as a public record under the freedom of  
15 information act, Act No. 442 of the Public Acts of 1976, being  
16 sections 15.231 to 15.246 of the Michigan Compiled Laws:

17 (a) Intellectual property created by a person employed by or  
18 under contract to a public university or college for purposes  
19 that include research, education, and related activities, until a  
20 reasonable opportunity is provided for the information to be pub-  
21 lished in a timely manner in a forum intended to convey the  
22 information to the academic community.

23 (b) Original works of authorship fixed in any tangible  
24 medium of expression created by a person employed by or under  
25 contract to a public university or college for purposes that  
26 include research, education, or related activities, until a  
27 reasonable opportunity is provided for the author to secure

1 copyright registration, not to exceed 12 months from the date the  
2 work is first fixed in a tangible medium of expression.

3 (c) Records regarding a process, a machine, an item of manu-  
4 facture, or a composition of matter, or any new and useful  
5 improvement of a process, a machine, an item of manufacture, or a  
6 composition of matter, until a reasonable opportunity is provided  
7 for the inventor to secure patent protection, not to exceed  
8 5 years from the date the records are first made.

9 (d) Trade secrets or other proprietary information in which  
10 a public university or college holds an interest or that a public  
11 university or college owns that is determined by the public uni-  
12 versity or college to have potential commercial value, if a gen-  
13 eral description of the nature of the information and a descrip-  
14 tion of the extent of the interest held by the public university  
15 or college in the information is made available to a person upon  
16 request.

17 (2) To the extent that the information and its commercial  
18 value are subject to copyright, patent, or trademark protection,  
19 subsection (1) does not apply to information regarding a product  
20 or process if the public university or college is selling or mar-  
21 keting the product or process to the general public.

22 (3) Section 3(3) applies to information described in this  
23 section that is provided by a private external source.

24 Sec. 5. This act does not limit the ability of a person  
25 employed by or under contract to a public university or college  
26 to engage in lawful projects independent of a public university  
27 or college, or prohibit such a person from disclosing information

1 regarding those independent projects or from receiving pecuniary  
2 income from those independent projects.

3       Sec. 6. The provisions of this act exempting information  
4 from disclosure shall be strictly construed.

5       Sec. 7. A person receiving a request under the freedom of  
6 information act, Act No. 442 of the Public Acts of 1976, being  
7 sections 15.231 to 15.246 of the Michigan Compiled Laws, for  
8 information exempt from disclosure under this act shall comply  
9 with the procedures and requirements of Act No. 442 of the Public  
10 Acts of 1976 in responding to the request and shall also provide  
11 to the person making the request a general written description of  
12 the information and a written explanation of the reason the  
13 request has been denied.