

Trade; securities; remedies and penalties for purchase or sale of securities based on material nonpublic information; provide for.

TRADE: Securities; LAW: Uniform or model acts

A bill to amend 1964 PA 265, entitled  
"Uniform securities act,"  
by amending section 101 (MCL 451.501), as amended by 2000 PA 494,  
and by adding section 410a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 101. (A) ~~It is unlawful for any person, in~~ IN con-  
2       nection with the offer, sale, or purchase of ~~any~~ A security, A  
3       PERSON SHALL NOT directly or indirectly:

4       (1) ~~To employ~~ EMPLOY any device, scheme, or artifice to  
5       defraud.

6       (2) ~~To make~~ MAKE any untrue statement of a material fact  
7       or ~~to~~ omit to state a material fact necessary in order to make  
8       the statements made, in the light of the circumstances under  
9       which they are made, not misleading.

1           (3) ~~To engage~~ ENGAGE in any act, practice, or course of  
2 business ~~which~~ THAT operates or would operate as a fraud or  
3 deceit upon any person.

4           (B) SUBJECT TO SUBSECTION (D), IN CONNECTION WITH THE PUR-  
5 CHASE OR SALE OF SECURITIES, A PERSON WHO IS AWARE OF MATERIAL  
6 NONPUBLIC INFORMATION ABOUT THE SECURITIES OR THE ISSUER OF THE  
7 SECURITIES SHALL NOT PURCHASE OR SELL THE SECURITIES BASED ON THE  
8 MATERIAL NONPUBLIC INFORMATION IN BREACH OF A DUTY OF TRUST OR  
9 CONFIDENCE THE PERSON OWES DIRECTLY, INDIRECTLY, OR DERIVATIVELY  
10 TO THE ISSUER, THE SHAREHOLDERS OF THE ISSUER, OR ANY OTHER  
11 PERSON THAT IS THE SOURCE OF THE MATERIAL NONPUBLIC INFORMATION.

12           (C) A PERSON SHALL NOT EMPLOY OR ATTEMPT TO EMPLOY ANY  
13 SCHEME OR ARTIFICE TO DO EITHER OF THE FOLLOWING:

14           (1) TO DEFRAUD A PERSON IN CONNECTION WITH THE PURCHASE OR  
15 SALE OF A SECURITY OF AN ISSUER THAT HAS A CLASS OF SECURITIES  
16 REGISTERED UNDER SECTION 12 OF THE SECURITIES EXCHANGE ACT OF  
17 1934, CHAPTER 404, 48 STAT. 881, 15 U.S.C. 781, OR THAT IS  
18 REQUIRED TO FILE REPORTS WITH THE SECURITIES AND EXCHANGE COMMIS-  
19 SION UNDER THE REPORTING REQUIREMENTS OF SECTION 15(d) OF THE  
20 SECURITIES EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881, 15  
21 U.S.C. 780.

22           (2) BY MEANS OF A FALSE OR FRAUDULENT PRETENSE, REPRESENTA-  
23 TION, OR PROMISE, TO OBTAIN MONEY OR PROPERTY IN CONNECTION WITH  
24 THE PURCHASE OR SALE OF A SECURITY OF AN ISSUER THAT HAS A CLASS  
25 OF SECURITIES REGISTERED UNDER SECTION 12 OF THE SECURITIES  
26 EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881, 15 U.S.C. 781,  
27 OR THAT IS REQUIRED TO FILE REPORTS WITH THE SECURITIES AND

1 EXCHANGE COMMISSION UNDER THE REPORTING REQUIREMENTS OF SECTION  
2 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934, CHAPTER 404, 48  
3 STAT. 881, 15 U.S.C. 78o.

4 (D) IN ADDITION TO ANY OTHER LAWFUL DEFENSE, A DEFENDANT MAY  
5 ESTABLISH 1 OR BOTH OF THE FOLLOWING AFFIRMATIVE DEFENSES TO A  
6 PROSECUTION OR ACTION FOR A VIOLATION OF SUBSECTION (B):

7 (1) FOR ANY DEFENDANT, BY SHOWING ALL OF THE FOLLOWING:

8 (A) THE DEFENDANT DID ANY OF THE FOLLOWING BEFORE BECOMING  
9 AWARE OF THE MATERIAL NONPUBLIC INFORMATION:

10 (i) ENTERED INTO A BINDING AGREEMENT TO PURCHASE OR SELL THE  
11 SECURITIES.

12 (ii) INSTRUCTED ANOTHER PERSON TO PURCHASE OR SELL THE  
13 SECURITIES FOR THE INSTRUCTING PERSON'S ACCOUNT.

14 (iii) ADOPTED A WRITTEN PLAN FOR TRADING SECURITIES.

15 (B) THE AGREEMENT, INSTRUCTION, OR PLAN DESCRIBED IN SUB-  
16 PARAGRAPH (A) MET ANY OF THE FOLLOWING:

17 (i) IT SPECIFIED THE AMOUNT OF SECURITIES TO BE PURCHASED OR  
18 SOLD, THE PURCHASE OR SALE PRICE, AND THE DATE OF THE PURCHASE OR  
19 SALE.

20 (ii) IT INCLUDED A WRITTEN FORMULA OR ALGORITHM OR SPECIFIED  
21 A COMPUTER PROGRAM TO BE USED TO DETERMINE THE AMOUNT OF SECURI-  
22 TIES TO BE PURCHASED OR SOLD, THE PURCHASE OR SALE PRICE, AND THE  
23 DATE OF THE PURCHASE OR SALE.

24 (iii) IT DID NOT PERMIT THE DEFENDANT TO EXERCISE ANY DIS-  
25 CRETION OVER HOW, WHEN, OR IF TO PURCHASE OR SELL THE  
26 SECURITIES.

1 (C) THE SECURITIES WERE PURCHASED OR SOLD PURSUANT TO THE  
2 AGREEMENT, INSTRUCTION, OR PLAN DESCRIBED IN SUBPARAGRAPH (A). A  
3 DEFENDANT WHO CHANGED THE AMOUNT OF SECURITIES TO BE PURCHASED OR  
4 SOLD, THE PURCHASE OR SALE PRICE, OR THE DATE OF THE PURCHASE OR  
5 SALE, WHO OTHERWISE ALTERED OR DEVIATED FROM THE AGREEMENT,  
6 INSTRUCTION, OR PLAN IN PURCHASING OR SELLING THE SECURITIES, OR  
7 WHO ENTERED INTO OR ALTERED A CORRESPONDING OR HEDGING TRANSAC-  
8 TION OR POSITION CONCERNING THE SECURITIES, HAS NOT MET THIS  
9 REQUIREMENT.

10 (D) THE AGREEMENT, INSTRUCTION, OR PLAN DESCRIBED IN SUB-  
11 PARAGRAPH (A) WAS GIVEN OR ENTERED INTO BY THE DEFENDANT IN GOOD  
12 FAITH AND NOT AS PART OF A PLAN OR SCHEME TO EVADE SUBSECTION  
13 (B).

14 (2) FOR A DEFENDANT WHO IS NOT AN INDIVIDUAL, BY SHOWING ALL  
15 OF THE FOLLOWING:

16 (A) THE DECISION TO PURCHASE OR SELL THE SECURITIES WAS MADE  
17 BY AN INDIVIDUAL WHO WAS AN EMPLOYEE OR AGENT OF THE DEFENDANT.

18 (B) THE EMPLOYEE OR AGENT WHO MADE THE DECISION TO PURCHASE  
19 OR SELL THE SECURITIES WAS NOT AWARE OF THE MATERIAL NONPUBLIC  
20 INFORMATION AT THE TIME OF THE PURCHASE OR SALE.

21 (C) AT THE TIME OF THE PURCHASE OR SALE, THE DEFENDANT HAD  
22 IN PLACE A POLICY OR PROCEDURE TO ENSURE THAT ITS EMPLOYEES OR  
23 AGENTS DO NOT VIOLATE SUBSECTION (B) OR ANY OTHER LAW PROHIBITING  
24 TRADING ON THE BASIS OF MATERIAL NONPUBLIC INFORMATION THAT WAS  
25 REASONABLE CONSIDERING THE NATURE OF THE DEFENDANT'S BUSINESS. A  
26 POLICY OR PROCEDURE THAT RESTRICTS THE PURCHASE OR SALE, OR  
27 CAUSING THE PURCHASE OR SALE, OF SECURITIES ABOUT WHICH AN

1 EMPLOYEE OR AGENT HAS MATERIAL NONPUBLIC INFORMATION, OR A POLICY  
2 OR PROCEDURE THAT PREVENTS AN EMPLOYEE OR AGENT FROM BECOMING  
3 AWARE OF MATERIAL NONPUBLIC INFORMATION ABOUT SECURITIES THE  
4 EMPLOYEE OR AGENT IS ENGAGED IN PURCHASING OR SELLING, MEETS THIS  
5 SUBPARAGRAPH.

6 (E) AS USED IN SUBSECTIONS (B) AND (D):

7 (1) "AMOUNT" MEANS A SPECIFIED NUMBER OF SHARES OR OTHER  
8 SECURITIES OR A SPECIFIED DOLLAR VALUE OF SECURITIES.

9 (2) "DATE" MEANS ANY OF THE FOLLOWING:

10 (A) FOR A MARKET ORDER, THE CALENDAR DAY ON WHICH THE ORDER  
11 IS TO BE EXECUTED, OR IF APPLICABLE, THE EARLIEST DAY AFTER THAT  
12 CALENDAR DAY WHEN THE EXECUTION OF THE ORDER IS PRACTICABLE UNDER  
13 ORDINARY PRINCIPLES OF BEST EXECUTION.

14 (B) FOR A LIMIT ORDER, A CALENDAR DAY ON WHICH THE LIMIT  
15 ORDER IS IN FORCE.

16 (3) "PRICE" MEANS A MARKET PRICE ON A SPECIFIED DATE, A  
17 LIMIT PRICE, OR A SPECIFIED DOLLAR PRICE.

18 SEC. 410A. (A) SUBJECT TO THE REQUIREMENTS OF THIS SECTION,  
19 IF A PERSON VIOLATES SECTION 101(B) OR A RULE OR ORDER UNDER SEC-  
20 TION 101(B), ANY PERSON WHO PURCHASED SECURITIES OF THE SAME  
21 CLASS AS THOSE PURCHASED BASED ON THE VIOLATION OR SOLD SECURI-  
22 TIES OF THE SAME CLASS AS THOSE SOLD BASED ON THE VIOLATION MAY  
23 BRING A CIVIL ACTION AGAINST THE PERSON THAT COMMITTED THE  
24 VIOLATION. A PERSON WHO VIOLATES SECTION 101(B) OR A RULE OR  
25 ORDER UNDER SECTION 101(B) BY COMMUNICATING MATERIAL NONPUBLIC  
26 INFORMATION AND ANY PERSON OR PERSONS WHO VIOLATE SECTION 101(B)  
27 OR A RULE OR ORDER UNDER SECTION 101(B) BY RECEIVING THAT

1 COMMUNICATION ARE JOINTLY AND SEVERALLY LIABLE UNDER THIS  
2 SUBSECTION.

3 (B) THE TOTAL AMOUNT OF DAMAGES THAT MAY BE IMPOSED IN ALL  
4 OF THE CIVIL ACTIONS BROUGHT BASED ON A SINGLE VIOLATION OF SEC-  
5 TION 101(B) OR A RULE OR ORDER UNDER SECTION 101(B) UNDER SUBSEC-  
6 TION (A) SHALL NOT EXCEED THE AMOUNT OF THE PROFIT GAINED OR LOSS  
7 AVOIDED IN THE TRANSACTION OR TRANSACTIONS THAT ARE THE SUBJECT  
8 OF THE VIOLATION.

9 (C) A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (A)  
10 MORE THAN 6 YEARS AFTER THE DATE OF THE LAST TRANSACTION THAT  
11 VIOLATED SECTION 101(B) OR A RULE OR ORDER UNDER SECTION 101(B).

12 (D) THE RIGHTS AND REMEDIES PROVIDED IN THIS SECTION ARE IN  
13 ADDITION TO ANY OTHER RIGHTS OR REMEDIES THAT MAY EXIST UNDER  
14 THIS ACT.

15 (E) THIS SECTION DOES NOT LIMIT OR AFFECT THE AUTHORITY OF  
16 THE ADMINISTRATOR OR ATTORNEY GENERAL TO TAKE ANY LEGAL OR ADMIN-  
17 ISTRATIVE ACTION DESCRIBED IN THIS ACT FOR A VIOLATION OF SECTION  
18 101(B) OR A RULE OR ORDER UNDER SECTION 101(B).