

# HOUSE BILL REPORT

## HB 2320

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to transactions by state officers involving nonpublic information.

**Brief Description:** Prohibiting certain transactions by state officers that involve nonpublic information.

**Sponsors:** Representatives Kelley, Hurst, Eddy, Finn and Blake.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/24/12, 1/31/12 [DPS].

**Brief Summary of Substitute Bill**

- Makes it an unranked class C felony for a state officer to buy, sell, or invest in securities, commodities, or real property on the basis of material nonpublic information if the officer gained the information by reason of his or her official position.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

**Staff:** Yvonne Walker (786-7841).

**Background:**

Generally, insider trading is the trading of a corporation's stock or other securities (e.g., bonds or stock options) by individuals with potential access to nonpublic information about the company. An "insider" includes any person who possesses inside information, who knows or should know the information is nonpublic, and who received the information in his

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or her business capacity and for a legitimate business reason by virtue of a relationship giving access, directly or indirectly, to the information.

*Federal Level.* Most crimes relating to insider trading are prosecuted at the federal level. The federal Exchange Act provides, with certain exceptions, that the criminal penalties for such violations can reach up to a maximum of \$1 million (\$2.5 million for corporate entities) and 10 years of imprisonment for each willful insider trading violation. Civil penalties may also be imposed in addition to the criminal penalties.

On March 17, 2011, H.R. 1148, the Stop Trading on Congressional Knowledge Act, (otherwise known as the STOCK Act) was introduced into the 112th House session. The STOCK Act prohibits members of Congress and federal employees from trading stocks based on nonpublic information obtained on the job. To date, the bill has not been enacted.

*Washington.* In the State of Washington, the securities industry is regulated by the Department of Financial Institutions (DFI) through its Division of Securities. This division, in turn, has an Enforcement Section that investigates consumer complaints and responds to referrals from the Office of the Attorney General (AGO), law enforcement agencies, and other securities regulators. In addition to providing technical assistance to law enforcement agencies, the Enforcement Section has both a legal and investigative staff who initiates administrative, civil, and criminal proceedings against violators of the State Securities Act (Act). However, the DFI does not prosecute insider trading.

Generally, Washington legislators and legislative employees are subject to the Ethics in Public Service Act (also called the State Ethics Act). If found in violation of the State Ethics Act, the Legislative Ethics Board may impose a reprimand; a civil penalty of up to \$5,000 per violation or three times the economic value of anything sought or received in violation of the law, whichever is greater; payment of damages sustained by the state that were caused by the violation of the law; and costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty.

A "state officer" is defined as any person holding a position of public trust in or under an executive, legislative, or judicial office of the state. This includes: judges, members of the Legislature, the Chief Clerk of the House of Representatives, elective officers in the executive branch, and state employees in supervisory, policy-making, or policy-enforcing work.

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### **Summary of Substitute Bill:**

A state officer may not buy, sell, or invest in securities, commodities, or real property on the basis of material nonpublic information if the officer gained the information by reason of his or her official position. A violation of this offense is an unranked class C felony punishable by up to one year of confinement, along with possible community service, legal financial obligations, community supervision, and a fine. The AGO has concurrent authority with county prosecuting attorneys to investigate and prosecute violations.

The AGO or a county prosecutor may bring a civil action against a state officer for a violation of the felony offense. If the court finds the state officer committed the violation, the court must order that any profits or other benefit be disgorged and paid to any person who suffered a financial loss due to the violation or to the State Treasurer for deposit in the General Fund.

**Substitute Bill Compared to Original Bill:**

A provision is clarified that authorizes the AGO or a county prosecutor to bring a civil action against a state officer for a violation of the felony offense. In addition, if a state officer is found in violation of the felony offense, a provision is clarified that requires the court to order the state officer to pay any profits or other benefit from the violation to any person who suffered a material financial loss due to the crime.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) On the federal level, there was a chairman of a financial institutions committee who had hearings on a particular subject area, who later traded and benefited financially from information received from his position. There was no penalty for his actions. In addition, a current speaker and a past speaker of the United States House of Representatives were found to have taken part in insider information.

There have been reports that the current federal law applies more to insider information gained by a financial insider and typically does not apply to legislators in their official duties. In Washington the State Ethics Act applies to members of the Legislature. Members found in violation of the State Ethics Act could be subject to small fines which is not sufficient to cover this type of violation.

(Opposed) None.

**Persons Testifying:** Representative Kelley, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.