STATE OF NEW YORK

758

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. BORES -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to requiring certain venture capital companies to report diversity information about its funding determinations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "diversity in investment act".

§ 2. The business corporation law is amended by adding a new section 113 to read as follows:

§ 113. Diversity in investment practices by venture capital companies.

(a) For the purposes of this section, unless the context clearly has a different meaning:

(1) "Venture capital company" means an entity that meets at least one of the following criteria:

(i) is a venture capital fund;

(ii) is a venture capital operating company; or

(iii) on at least one occasion during the annual period commencing with the date of its initial capitalization, and on at least one occasion during each annual period thereafter, at least fifty percent of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are venture capital investments or derivative investments.

(2) "Venture capital fund" means an entity as defined in rule 203(l)-1 adopted by the securities and exchange commission under the investment advisers act of 1940.

(3) "Venture capital operating company" means an entity as defined in rule 2510.3-101(d) adopted by the United States department of labor under the employee retirement income security act of 1974.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(4) "Venture capital investment" means an acquisition of securities in an operating company as to which the investment adviser, the entity advised by the investment adviser, or an affiliated person of either has or obtains management rights.

(5) "Management rights" means the right, obtained contractually or through ownership of securities, either through one person alone or in conjunction with one or more persons acting together or through an affiliated person, to substantially participate in, to substantially influence the conduct of, or to provide or to offer to provide significant guidance and counsel concerning, the management, operations or business objectives of the operating company in which the venture capital investment is made.

(6) "Derivative investment" means an acquisition of securities by a venture capital company in the ordinary course of its business in exchange for an existing venture capital investment either: upon the exercise or conversion of the existing venture capital investment; or in connection with a public offering of securities or the merger or reorganization of the operating company to which the existing venture capital investment relates.

(7) "Covered entity" means a venture capital company that meets both of the following criteria:

(i) The venture capital company meets either of the following criteria:

(A) The venture capital company primarily engages in the business of investing in, or providing financing to, startup, early-stage, or emerging growth companies.

(B) The venture capital company manages assets on behalf of third-party investors, including, but not limited to, investments made on behalf of a state or local retirement or pension system.

(ii) The venture capital company meets any of the following criteria:

(A) The venture capital company is headquartered in the state of New York.

(B) The venture capital company has a significant presence or operational office in the state of New York.

(C) The venture capital company makes venture capital investments in businesses that are located in, or have significant operations in, the state of New York.

(D) The venture capital company solicits or receives investments from a person who is a resident of the state of New York.

(8) "Diverse founding team member" means a founding team member who self-identifies as a woman, nonbinary, Black, African American, Hispanic, Latino-Latina, Asian, Pacific Islander, Native American, Native Hawaiian, Alaskan Native, disabled, veteran or disabled veteran, lesbian, gay, bisexual, transgender, or queer.

(9) "Founding team member" means either of the following:

(i) A person who satisfies all of the following conditions:

(A) The person owned initial shares or similar ownership interests of the business.

(B) The person contributed to the concept of, research for, development of, or work performed by the business before initial shares were issued.

(C) The person was not a passive investor in the business.

(ii) A person who has been designated as the chief executive officer, president, chief financial officer, or manager of a business, or who has been designated with a role with a similar level of authority as any of those positions.

(10) "Non-compliance" means that a covered entity:
(i) intentionally filed misleading diversity data;
(ii) mistakenly filed incorrect data and failed to correct such data within six months of receiving notification from the attorney general's office of such incorrect data;
(iii) failed to file the report required pursuant to this section and failed to file such report within six months of receiving notification from the attorney general's office of such failure to file such report; or
(iv) failed to keep accurate records for the amount of time required pursuant to paragraph (e) of this section.
(11) "Primarily founded by diverse founding team members" means a founding team for which more than one-half of the founding team members responded to the survey described in subparagraph two of paragraph (b) of this section and at least one-half of the founding team members are diverse founding team members.
(b) (1) Commencing on March first, two thousand twenty-eight and annually thereafter, a covered entity shall report all of the following information about its funding determinations by completing a form to be created by the secretary of state, with such form ascertaining at a minimum:
(i) At an aggregated level, for the founding teams of all of the businesses in which the covered entity made a venture capital investment in the prior calendar year to the extent the information was provided pursuant to the survey described in subparagraph two of this paragraph:
(A) The gender identity of each member of the founding team, including nonbinary and gender-fluid identities.
(B) The race of each member of the founding team.
(C) The ethnicity of each member of the founding team.
(D) The disability status of each member of the founding team.
(E) Whether any member of the founding team identifies as LGBTQ+.
(F) Whether any member of the founding team is a veteran or a disabled veteran.
(G) Whether any member of the founding team is a resident of the state of New York.
(H) Whether any member of the founding team declined to provide any of the information described in items (A) to (D) of this clause.
(ii) (A) During the prior calendar year, the number of venture capital investments to businesses primarily founded by diverse founding team members, as a percentage of the total number of venture capital investments the covered entity made, in the aggregate and broken down into the categories described in items (A) to (D) of clause (i) of this subparagraph.
(B) The information provided pursuant to this subparagraph shall be anonymized.
(iii) During the prior calendar year, the total amount of venture capital investments to businesses primarily founded by diverse founding team members, as a percentage of venture capital investments made by the covered entity, in the aggregate and broken down into the categories described in subclauses (A) to (D) of clause (i) of this subparagraph.
(iv) The total amount of money in venture capital investments the covered entity invested in each business during the prior calendar year.
(v) The principal place of business of each company in which the covered entity made a venture capital investment during the prior calendar year.

(2) (i) A covered entity shall obtain the information required by subparagraph one of this paragraph by providing each founding team member of a business that has received funding from a venture capital company to which the covered entity has acted as an investment adviser with an opportunity to participate in a survey for the purpose of collecting the information.

(ii) The survey shall include a "decline to state" option for each question on the survey.

(iii) A covered entity shall provide a written disclosure to each founding team member prior to, or concurrently with, the survey described in clause (i) of this subparagraph that states all of the following:

(A) The founding team member's decision to disclose their demographic information is voluntary.

(B) No adverse action will be taken against the founding team member if they decline to participate in the survey.

(iv) A covered entity shall not provide the survey described in subparagraph one of this paragraph and the disclosure described in clause (iii) of this subparagraph to a founding team member until after the covered entity has executed an investment agreement with the business and made the first transfer of funds.

(v) A covered entity shall not in any way encourage, incentivize, or attempt to influence the decision of a founding team member to participate in the survey described in clause (i) of this subparagraph.

(3) A covered entity required to conduct the survey described in subparagraph two of this paragraph shall do both of the following:

(i) Collect survey response data from the founding team members in a manner that does not associate the survey response data with an individual founding team member.

(ii) Report the survey response data pursuant to subparagraph two of this paragraph in a manner that does not associate the survey response data with an individual founding team member.

(c) A covered entity may satisfy the requirements of this section by providing a report prepared by a business that controls each venture capital company to which the covered entity acted as an investment adviser at any time during the prior calendar year if the report contains all of the information required by subparagraph one of paragraph (b) of this section.

(d) A covered entity shall make the reports received pursuant to paragraph (b) of this section readily accessible, easily searchable, and easily downloadable on the covered entity's internet website.

(e) Commencing on July first, two thousand twenty-eight, and on July first annually thereafter, a covered entity shall submit a completed version of the form referenced in paragraph (b) of this section to the secretary of state. The secretary of state shall make all reports submitted to it pursuant to this section electronically available to the public in a searchable format on its website.

(f) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any

person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than one thousand dollars per day during such time of non-compliance for firms with under one hundred fifty million dollars in total assets, not more than three thousand dollars per day for firms with between one hundred fifty million dollars and one billion five hundred million dollars in assets, and not more than five thousand dollars per day for firms with over one billion five hundred million dollars in assets. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 3. This act shall take effect immediately.