

STATE OF NEW YORK

9786

IN ASSEMBLY

April 9, 2024

Introduced by M. of A. BORES -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business 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:

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

3 § 2. The general business law is amended by adding a new section 390-f
4 to read as follows:

5 § 390-f. Diversity in investment practices by venture capital compa-
6 nies. 1. For the purposes of this section, unless the context clearly
7 has a different meaning:

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

10 (1) is a venture capital fund;

11 (2) is a venture capital operating company; or

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

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

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

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

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

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1 (e) "Management rights" means the right, obtained contractually or
2 through ownership of securities, either through one person alone or in
3 conjunction with one or more persons acting together or through an
4 affiliated person, to substantially participate in, to substantially
5 influence the conduct of, or to provide or to offer to provide signif-
6 icant guidance and counsel concerning, the management, operations or
7 business objectives of the operating company in which the venture capi-
8 tal investment is made.

9 (f) "Derivative investment" means an acquisition of securities by a
10 venture capital company in the ordinary course of its business in
11 exchange for an existing venture capital investment either: upon the
12 exercise or conversion of the existing venture capital investment; or in
13 connection with a public offering of securities or the merger or reor-
14 ganization of the operating company to which the existing venture capi-
15 tal investment relates.

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

18 (1) The venture capital company meets either of the following crite-
19 ria:

20 (i) The venture capital company primarily engages in the business of
21 investing in, or providing financing to, startup, early-stage, or emerg-
22 ing growth companies.

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

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

27 (i) The venture capital company is headquartered in the state of New
28 York.

29 (ii) The venture capital company has a significant presence or opera-
30 tional office in the state of New York.

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

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

36 (h) "Diverse founding team member" means a founding team member who
37 self-identifies as a woman, nonbinary, Black, African American, Hispan-
38 ic, Latino-Latina, Asian, Pacific Islander, Native American, Native
39 Hawaiian, Alaskan Native, disabled, veteran or disabled veteran, lesbi-
40 an, gay, bisexual, transgender, or queer.

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

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

43 (i) The person owned initial shares or similar ownership interests of
44 the business.

45 (ii) The person contributed to the concept of, research for, develop-
46 ment of, or work performed by the business before initial shares were
47 issued.

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

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

53 (j) "Non-compliance" means that a covered entity:

54 (1) intentionally filed misleading diversity data;

(2) 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;

(3) 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

(4) failed to keep accurate records for the amount of time required pursuant to subdivision five of this section.

(k) "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 paragraph (b) of subdivision two of this section and at least one-half of the founding team members are diverse founding team members.

2. (a) Commencing on March first, two thousand twenty-five or ninety days after the effective date of this section, whichever is later, and annually thereafter, a covered entity shall report all of the following information about its funding determinations:

(1) At an aggregated level, all of the following information 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 paragraph (b) of this subdivision:

(i) The gender identity of each member of the founding team, including nonbinary and gender-fluid identities.

(ii) The race of each member of the founding team.

(iii) The ethnicity of each member of the founding team.

(iv) The disability status of each member of the founding team.

(v) Whether any member of the founding team identifies as LGBTQ+.

(vi) Whether any member of the founding team is a veteran or a disabled veteran.

(vii) Whether any member of the founding team is a resident of the state of New York.

(viii) Whether any member of the founding team declined to provide any of the information described in clauses (i) to (vii) of this subparagraph.

(2) (i) 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 clauses (i) to (vi) of subparagraph one of this paragraph.

(ii) The information provided pursuant to this subparagraph shall be anonymized.

(3) 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 clauses (i) to (vi) of subparagraph one of this paragraph.

(4) The total amount of money in venture capital investments the covered entity invested in each business during the prior calendar year.

(5) The principal place of business of each company in which the covered entity made a venture capital investment during the prior calendar year.

(b) (1) A covered entity shall obtain the information required by paragraph (a) of this subdivision by providing each founding team member

1 of a business that has received funding from a venture capital company
2 to which the covered entity has acted as an investment adviser with an
3 opportunity to participate in a survey for the purpose of collecting the
4 information.

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

7 (3) A covered entity shall provide a written disclosure to each found-
8 ing team member prior to, or concurrently with, the survey described in
9 subparagraph one of this paragraph that states all of the following:

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

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

14 (4) A covered entity shall not provide the survey described in subpara-
15 graph one of this paragraph and the disclosure described in subpara-
16 graph three of this paragraph to a founding team member until after the
17 covered entity has executed an investment agreement with the business
18 and made the first transfer of funds.

19 (5) A covered entity shall not in any way encourage, incentivize, or
20 attempt to influence the decision of a founding team member to partic-
21 ipate in the survey described in subparagraph one of this paragraph.

22 (c) A covered entity required to conduct the survey described in
23 subparagraph one of paragraph (b) of this subdivision shall do both of
24 the following:

25 (1) Collect survey response data from the founding team members in a
26 manner that does not associate the survey response data with an individ-
27 ual founding team member.

28 (2) Report the survey response data pursuant to paragraph (a) of this
29 subdivision in a manner that does not associate the survey response data
30 with an individual founding team member.

31 3. A covered entity may satisfy the requirements of this section by
32 providing a report prepared by a business that controls each venture
33 capital company to which the covered entity acted as an investment
34 adviser at any time during the prior calendar year if the report
35 contains all of the information required by paragraph (a) of subdivision
36 two of this section.

37 4. A covered entity shall make the reports received pursuant to subdi-
38 vision two of this section readily accessible, easily searchable, and
39 easily downloadable on the covered entity's internet website or another
40 easily accessible public forum.

41 5. A covered entity shall make and keep records related to its obli-
42 gations under this section. All records related to a report pursuant to
43 subdivision two of this section shall be preserved for at least four
44 years after the covered entity delivers the report.

45 6. Whenever there shall be a violation of this section, an application
46 may be made by the attorney general in the name of the people of the
47 state of New York to a court or justice having jurisdiction by a special
48 proceeding to issue an injunction, and upon notice to the defendant of
49 not less than five days, to enjoin and restrain the continuance of such
50 violations; and if it shall appear to the satisfaction of the court or
51 justice that the defendant has, in fact, violated this article, an
52 injunction may be issued by such court or justice, enjoining and
53 restraining any further violation, without requiring proof that any
54 person has, in fact, been injured or damaged thereby. In any such
55 proceeding, the court may make allowances to the attorney general as
56 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.