

# 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;

1 (2) mistakenly filed incorrect data and failed to correct such data  
2 within six months of receiving notification from the attorney general's  
3 office of such incorrect data;

4 (3) failed to file the report required pursuant to this section and  
5 failed to file such report within six months of receiving notification  
6 from the attorney general's office of such failure to file such report;  
7 or

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

10 (k) "Primarily founded by diverse founding team members" means a  
11 founding team for which more than one-half of the founding team members  
12 responded to the survey described in paragraph (b) of subdivision two of  
13 this section and at least one-half of the founding team members are  
14 diverse founding team members.

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

19 (1) At an aggregated level, all of the following information for the  
20 founding teams of all of the businesses in which the covered entity made  
21 a venture capital investment in the prior calendar year to the extent  
22 the information was provided pursuant to the survey described in para-  
23 graph (b) of this subdivision:

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

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

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

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

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

30 (vi) Whether any member of the founding team is a veteran or a disa-  
31 bled veteran.

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

34 (viii) Whether any member of the founding team declined to provide any  
35 of the information described in clauses (i) to (vii) of this subpara-  
36 graph.

37 (2) (i) During the prior calendar year, the number of venture capital  
38 investments to businesses primarily founded by diverse founding team  
39 members, as a percentage of the total number of venture capital invest-  
40 ments the covered entity made, in the aggregate and broken down into the  
41 categories described in clauses (i) to (vi) of subparagraph one of this  
42 paragraph.

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

45 (3) During the prior calendar year, the total amount of venture capi-  
46 tal investments to businesses primarily founded by diverse founding team  
47 members, as a percentage of venture capital investments made by the  
48 covered entity, in the aggregate and broken down into the categories  
49 described in clauses (i) to (vi) of subparagraph one of this paragraph.

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

52 (5) The principal place of business of each company in which the  
53 covered entity made a venture capital investment during the prior calen-  
54 dar year.

55 (b) (1) A covered entity shall obtain the information required by  
56 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

1 hundred three of the civil practice law and rules, and direct restitu-  
2 tion. Whenever the court shall determine that a violation of this arti-  
3 cle has occurred, the court may impose a civil penalty of not more than  
4 one thousand dollars per day during such time of non-compliance for  
5 firms with under one hundred fifty million dollars in total assets, not  
6 more than three thousand dollars per day for firms with between one  
7 hundred fifty million dollars and one billion five hundred million  
8 dollars in assets, and not more than five thousand dollars per day for  
9 firms with over one billion five hundred million dollars in assets. In  
10 connection with any such proposed application, the attorney general is  
11 authorized to take proof and make a determination of the relevant facts  
12 and to issue subpoenas in accordance with the civil practice law and  
13 rules.

14 § 3. This act shall take effect immediately.