

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:

- 1 Section 1. This act shall be known and may be cited as the "diversity
2 in investment act".
- 3 § 2. The business corporation law is amended by adding a new section
4 113 to read as follows:
- 5 § 113. Diversity in investment practices by venture capital companies.
6 (a) For the purposes of this section, unless the context clearly has a
7 different meaning:
- 8 (1) "Venture capital company" means an entity that meets at least one
9 of the following criteria:
- 10 (i) is a venture capital fund;
11 (ii) is a venture capital operating company; or
12 (iii) on at least one occasion during the annual period commencing
13 with the date of its initial capitalization, and on at least one occa-
14 sion 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 (2) "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 (3) "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.

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

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

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

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

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

22 (i) The venture capital company meets either of the following crite-
23 ria:

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

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

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

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

33 (B) The venture capital company has a significant presence or opera-
34 tional office in the state of New York.

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

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

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

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

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

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

49 (B) The person contributed to the concept of, research for, develop-
50 ment of, or work performed by the business before initial shares were
51 issued.

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

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

1 (10) "Non-compliance" means that a covered entity:

2 (i) intentionally filed misleading diversity data;

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

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

10 (iv) failed to keep accurate records for the amount of time required
11 pursuant to paragraph (e) of this section.

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

17 (b) (1) Commencing on March first, two thousand twenty-eight and annu-
18 ally thereafter, a covered entity shall report all of the following
19 information about its funding determinations by completing a form to be
20 created by the secretary of state, with such form ascertaining at a
21 minimum:

22 (i) At an aggregated level, for the founding teams of all of the busi-
23 nesses in which the covered entity made a venture capital investment in
24 the prior calendar year to the extent the information was provided
25 pursuant to the survey described in subparagraph two of this paragraph:

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

28 (B) The race of each member of the founding team.

29 (C) The ethnicity of each member of the founding team.

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

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

32 (F) Whether any member of the founding team is a veteran or a disabled
33 veteran.

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

36 (H) Whether any member of the founding team declined to provide any of
37 the information described in items (A) to (D) of this clause.

38 (ii) (A) During the prior calendar year, the number of venture capital
39 investments to businesses primarily founded by diverse founding team
40 members, as a percentage of the total number of venture capital invest-
41 ments the covered entity made, in the aggregate and broken down into the
42 categories described in items (A) to (D) of clause (i) of this subpara-
43 graph.

44 (B) The information provided pursuant to this subparagraph shall be
45 anonymized.

46 (iii) During the prior calendar year, the total amount of venture
47 capital investments to businesses primarily founded by diverse founding
48 team members, as a percentage of venture capital investments made by the
49 covered entity, in the aggregate and broken down into the categories
50 described in subclauses (A) to (D) of clause (i) of this subparagraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 3. This act shall take effect immediately.