HOUSE DOCKET, NO. 1853 FILED ON: 1/18/2023

HOUSE . . . . . No. 1708

The Commonwealth of Massachusetts

PRESENTED BY:

Tram T. Nguyen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to fair investment practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tram T. Nguyen	*18th Essex*	*1/18/2023*
James K. Hawkins	*2nd Bristol*	*1/27/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/31/2023*
Jon Santiago	*9th Suffolk*	*2/6/2023*
Tommy Vitolo	*15th Norfolk*	*3/30/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*7/10/2023*
Samantha Montaño	*15th Suffolk*	*7/20/2023*
Kate Donaghue	*19th Worcester*	*10/25/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*12/15/2023*

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HOUSE . . . . . No. 1708

By Representative Nguyen of Andover, a petition (accompanied by bill, House, No. 1708) of Tram T. Nguyen and others for legislation to further regulate investment practices. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to fair investment practices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after Chapter 151F the following chapter:-

Chapter 151G.

FAIR INVESTMENT PRACTICES.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Commission", the Massachusetts commission against discrimination, established by section 56 of chapter 6.

"Historically disadvantaged members of protected classes", members of protected classes that have historically received less in professional investor funding than their respective shares of the population.

"Professional investor", one or more persons, including but not limited to, a bank, bank holding company, savings institution, trust company, insurance company, investment company registered under the Federal Investment Company Act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the Federal Small Business Investment Act of 1958, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, and venture capital fund, whose business includes sponsoring, guaranteeing or granting funds or engaging in investment transactions.

"Protected characteristic", race; color; religious creed; national origin; sex; gender identity; sexual orientation, which shall not include sexual orientation involving minor children as the sex object; age; genetic information; ancestry; status as a veteran; handicap; or pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child.

"Protected class", a group of people sharing a protected characteristic.

"Venture capital fund", shall have the same meaning as defined in 17 CFR § 275.203(l)-1.

Section 2. (a) It shall be unlawful for a professional investor doing business in the commonwealth to:

(1) make sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature either directly or indirectly through an intermediary when: (i) submission to or rejection of such advances, requests or conduct is made explicitly or implicitly a basis for business investment transactions, including the sponsoring, guaranteeing or granting of funds; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably

interfering with an individual's working relationship with a person by creating an intimidating, hostile, humiliating or sexually offensive environment; provided, that discrimination on the basis of sex shall include, but not be limited to, sexual harassment; and

(2) discriminate on the basis of a protected characteristic in the sponsoring, guaranteeing or granting of funds or in making available funds; provided, however, that it shall not be unlawful for a Professional Investor to designate certain funds solely for historically disadvantaged members of protected classes and companies that historically disadvantaged members of protected classes direct, own or manage.

Section 3. (a) A professional investor who commits an unlawful act under paragraph (1) of subsection (a) of section 2 shall be liable for damages, including, but not limited to, compensatory, incidental, consequential, and punitive damages and injunctive and other appropriate equitable relief. A plaintiff may seek to recover such liability in any court of competent jurisdiction. The court shall, in addition to any judgment awarded to the plaintiff, award reasonable attorneys' fees to be paid by the defendant and the costs of the action.

(b) The attorney general shall have the sole authority to bring enforcement action for violations of paragraph (2) of subsection (a) of section 2, and may bring an action for damages, together with the costs of the action and reasonable attorneys' fees, against a professional investor who commits an unlawful act under paragraph (2) of subsection (a) of section 2. Those costs and attorneys' fees shall be paid to the commonwealth. The attorney general shall not be required to pay any filing fee or other cost in connection with such action.

(c) Any action based upon or arising under this chapter shall be instituted within 3 years after the date of the last alleged unlawful act.

(d) A professional investor against whom an action is brought by the attorney general alleging an unlawful act under paragraph (2) of subsection (a) of section 2 and who can demonstrate that the professional investor has complied with the commission's compliance guidelines, established in section 4, including a completed self-evaluation, as described in paragraph (3) of subsection (a) of section 4, within the previous 3 years, shall have an affirmative defense to liability under this section.

A professional investor who has not fully complied with the commission's compliance guidelines, established in section 4, but who has partially complied with such guidelines and can demonstrate reasonable progress toward full compliance with such guidelines, shall not be entitled to an affirmative defense, but may not be liable for punitive damages under this section.

Section 4. The commission, in consultation with the attorney general and the secretary of state shall establish compliance guidelines to assist professional investors in complying with the requirements of this chapter. At a minimum, the guidelines shall advise professional investors to:

(1) include a policy in the professional investor's organizational charter that details how the professional investor will comply with the requirements of this chapter;

(2) adopt clear procedures for the professional investor's operations to ensure that the professional investor's employees and agents comply with the requirements of this chapter;

(3) complete a self-evaluation, at least once every 3 years, of the professional investor's investment decisions in good faith, including an evaluation that demonstrates that the professional investor has made reasonable progress towards providing a greater share of the professional investor's funding to historically disadvantaged members of protected classes and companies that historically disadvantaged members of protected classes direct, own or manage,

provided, that the professional investor's self-evaluation may be of the investor's own design, so long as it is reasonable in detail and scope in light of the size of the professional investor's financial assets; and

(4) comply with the rules, regulations, and other guidance developed by the commission under subsection (c).

(b) As needed, but not less than every 3 years, the commission, in consultation with the attorney general and the secretary of state, shall update the compliance guidelines required by this section.

(c) The commission shall promulgate rules, regulations or other guidelines to implement this section. Such rules, regulations or other guidelines may include model templates for a professional investor to modify and adopt for its particular use.

SECTION 3. Notwithstanding any general or special law to the contrary, the Massachusetts commission against discrimination, in consultation with the attorney general and the secretary of state, shall publish initial compliance guidelines, as required by section 4 of chapter 151G of the General Laws, not later than 1 year after the effective date of this act.