

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:
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/18/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/27/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/31/2023</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/6/2023</i>

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:

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

3 Chapter 151G.

4 FAIR INVESTMENT PRACTICES.

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

7 “Commission”, the Massachusetts commission against discrimination, established by
8 section 56 of chapter 6.

9 “Historically disadvantaged members of protected classes”, members of protected classes
10 that have historically received less in professional investor funding than their respective shares of
11 the population.

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

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

24 “Protected class”, a group of people sharing a protected characteristic.

25 “Venture capital fund”, shall have the same meaning as defined in 17 CFR § 275.203(l)-
26 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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