

JAN 22 2021

A BILL FOR AN ACT

RELATING TO EQUITABLE GENDER REPRESENTATION ON CORPORATE BOARDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the inclusion of
2 individuals of all genders on boards of directors of publicly
3 held corporations will boost the State's economy; improve
4 opportunities for all individuals in the workplace; protect
5 Hawaii taxpayers, shareholders, and retirees; and lead to other
6 societal benefits. The legislature recognizes that numerous
7 independent studies have concluded that publicly held
8 corporations generally perform better, or, at the very least,
9 show no negative effects, when there is gender diversity of
10 their boards of directors. A 2017 study by MSCI ESG RESEARCH
11 found that during the period from 2011 to 2016, United States
12 companies with three or more female directors reported earnings
13 per share that were thirty-seven per cent higher than earnings
14 for companies with no female directors. A 2016 study in the
15 *Journal of Social Issues* acknowledged that while findings
16 regarding the effects of gender diversity of corporate boards
17 are mixed, with no clear positive or negative trend, there are



1 no negative effects of such diversity, particularly for
2 companies' accounting outcomes. In 2014, Credit Suisse found
3 that companies with at least one woman on their boards since
4 2005 had an average return on equity of 14.1 per cent, compared
5 to 11.2 per cent for companies with no female directors. The
6 same report found that companies with women on their boards had
7 a price-to-book value of 2.3 times the value in comparison to
8 1.8 times the value for companies without women on their boards.
9 Further, a 2012 study from the University of California,
10 Berkeley found that companies with more women on their boards
11 are more likely to "create a sustainable future" by, among other
12 matters, instituting strong governance structures with a high
13 level of transparency.

14 The legislature also recognizes, however, that studies
15 predict that it will take forty to fifty years to achieve gender
16 parity if proactive measures are not taken. The legislature
17 notes that economically thriving European countries, such as
18 Germany, France, Norway, and the Netherlands, have addressed the
19 lack of gender diversity on corporate boards by instituting
20 quotas mandating that thirty to forty per cent of seats be held
21 by female directors.



1 The purpose of this Act is to require publicly held
2 domestic corporations to include individuals of all genders
3 among the directors of their corporate boards.

4 SECTION 2. Chapter 414, Hawaii Revised Statutes, is
5 amended by adding a new section to part IX, subpart A, to be
6 appropriately designated and to read as follows:

7 "§414- Boards of publicly held corporations; equitable
8 gender representation. (a) Each publicly held domestic
9 corporation whose principal executive office is located within
10 the State shall comply with the following equitable gender
11 representation requirements:

12 (1) Beginning no later than December 31, 2021, have a
13 gender-diverse board; and

14 (2) Beginning no later than December 31, 2023, have a
15 minimum of three non-male and three non-female
16 directors on its board; provided that if its number of
17 directors is five, the corporation shall have at least
18 two non-male and two non-female directors; provided
19 further that if its number of directors is four or
20 fewer, the corporation shall have at least one
21 non-male and one non-female director.



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1 A corporation may increase the number of directors on its
2 board to comply with this section.

3 (b) Each corporation subject to this section shall report
4 on its compliance to the department of commerce and consumer
5 affairs in the form and substance directed by the department.

6 (c) No later than July 1, 2022, the department of commerce
7 and consumer affairs shall publish a report on its website
8 documenting the number of domestic corporations having a
9 principal executive office located within the State that have at
10 least one non-male and one non-female director.

11 (d) No later than March 1, 2023, and no later than each
12 March 1 thereafter, the department of commerce and consumer
13 affairs shall publish an annual report on its website that shall
14 provide, at a minimum:

15 (1) The number of corporations subject to this section
16 that complied with this section for any period of time
17 during the preceding calendar year;

18 (2) The number of publicly held corporations that moved
19 their United States headquarters to this State from
20 outside of the State during the preceding calendar
21 year; and



1 (3) The number of corporations that were subject to this
2 section at some point during the preceding calendar
3 year, but subsequently ceased to be publicly held
4 corporations.

5 (e) The department of commerce and consumer affairs shall
6 adopt rules pursuant to chapter 91 to implement this section.

7 (f) In addition to any other applicable fine or penalty,
8 an administrative fine shall be imposed upon a corporation
9 subject to this section for failure to timely file with the
10 department information that is required by any rule adopted by
11 the department. For a first violation, the fine shall be \$500.
12 For any second violation or subsequent violation that occurs
13 within ten years after the most recent violation, the fine shall
14 be \$1,000.

15 (g) In addition to any other applicable fine or penalty,
16 an administrative fine shall be imposed upon a corporation
17 subject to this section for failure to comply with the equitable
18 gender representation requirements of subsection (a). For a
19 first violation, the fine shall be \$1,000. For any second
20 violation or subsequent violation that occurs within ten years
21 after the most recent violation, the fine shall be \$5,000. For



1 the purposes of this subsection, each director's seat not in
2 compliance with this section shall count as a separate
3 violation.

4 (h) For purposes of this section:

5 "Principal executive office" means a corporation's
6 principal executive office, as listed on the corporation's most
7 recent United States Security and Exchange Commission FORM 10-K.

8 "Publicly held corporation" means a corporation with
9 outstanding shares listed on a major United States stock
10 exchange."

11 SECTION 3. Section 414-16, Hawaii Revised Statutes, is
12 amended by amending subsection (d) to read as follows:

13 "(d) The department director's duty to file documents
14 under this section is ministerial[-]; provided that the
15 department shall perform its duties under section 414- . The
16 department director's filing or refusing to file a document does
17 not:

18 (1) Affect the validity or invalidity of the document in
19 whole or part;

20 (2) Relate to the correctness or incorrectness of
21 information contained in the document; and



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1 (3) Create a presumption that the document is valid or
2 invalid or that information contained in the document
3 is correct or incorrect."

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY: _____

Karl Rhoad



S.B. NO. 193

Report Title:

Gender Representation; Corporate Boards; Department of Commerce and Consumer Affairs; Reports

Description:

Requires publicly held domestic corporations to include non-male and non-female individuals among the directors of their corporate board. Establishes reporting requirements for the Department of Commerce and Consumer Affairs and penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

