

JAN 18 2023

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 Hawai'i 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 their boards of directors are
10 gender diverse. A 2017 study by MSCI ESG Research found that
11 from 2011 to 2016, United States companies with three or more
12 female directors reported earnings per share that were thirty-
13 seven per cent higher than earnings for companies with no female
14 directors. A 2016 study in the *Journal of Social Issues*
15 acknowledged that while findings regarding the effects of gender
16 diversity of corporate boards are mixed, with no clear positive
17 or negative trend, there are no negative effects of such



1 diversity, particularly for companies' accounting outcomes. In
2 2014, the Credit Suisse Research Institute found that companies
3 with at least one woman on their boards since 2005 had an
4 average return on equity of 14.1 per cent, compared to 11.2 per
5 cent for companies with no female directors. The same report
6 found that companies with women on their boards had a
7 price-to-book value of 2.3 times the value in comparison to 1.8
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, 2023, have a
13 gender-diverse board; and

14 (2) Beginning no later than December 31, 2025, have a
15 minimum of:

16 (A) Three male or non-binary directors on its board;
17 and

18 (B) Three female or non-binary directors on its
19 board;

20 provided that, if its number of directors is five, the
21 corporation shall have at least two male or non-binary



1 directors and at least two female or non-binary
2 directors; provided further that, if its number of
3 directors is four or fewer, the corporation shall have
4 at least one male or non-binary director and at least
5 one female or non-binary director.

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

8 (b) Each corporation subject to this section shall report
9 on its compliance to the department director in the form and
10 substance directed by the department director.

11 (c) No later than July 1, 2026, the department director
12 shall publish a report on the department of commerce and
13 consumer affairs' internet website documenting the number of all
14 publicly held domestic corporations whose principal executive
15 office is located within the State that have at least one male
16 or non-binary director and one female or non-binary director.

17 (d) No later than March 1, 2027, and no later than each
18 March 1 thereafter, the department director shall publish an
19 annual report on the department of commerce and consumer
20 affairs' internet website that shall provide, at a minimum:



- 1 (1) The number of corporations subject to this section
2 that complied with this section for any period of time
3 during the preceding calendar year;
- 4 (2) The number of publicly held corporations that moved
5 their United States headquarters to the State from
6 outside of the State during the preceding calendar
7 year; and
- 8 (3) The number of corporations that were subject to this
9 section at some point during the preceding calendar
10 year but subsequently ceased to be publicly held
11 corporations.
- 12 (e) The department director shall adopt rules pursuant to
13 chapter 91 to implement this section.
- 14 (f) In addition to any other applicable fine or penalty,
15 an administrative fine shall be imposed upon a corporation
16 subject to this section for failure to timely file with the
17 department director information that is required by any rule
18 adopted by the department director. For a first violation, the
19 fine shall be \$500. For any second violation, or subsequent
20 violation that occurs within ten years after the most recent
21 violation, the fine shall be \$1,000.



1 (g) In addition to any other applicable fine or penalty,
2 an administrative fine shall be imposed upon a corporation
3 subject to this section for failure to comply with the equitable
4 gender representation requirements of subsection (a). For a
5 first violation, the fine shall be \$1,000. For any second
6 violation, or subsequent violation that occurs within ten years
7 after the most recent violation, the fine shall be \$5,000. For
8 the purposes of this subsection, each director's seat not in
9 compliance with this section shall count as a separate
10 violation.

11 (h) For purposes of this section:

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

15 "Publicly held corporation" means a corporation with
16 outstanding shares listed on a major United States stock
17 exchange."

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

20 "(d) The department director's duty to file documents
21 under this section is ministerial[-]; provided that the




1 department shall perform its duties under section 414- . The
2 department director's filing or refusing to file a document does
3 not:

- 4 (1) Affect the validity or invalidity of the document in
5 whole or part;
- 6 (2) Relate to the correctness or incorrectness of
7 information contained in the document; and
- 8 (3) Create a presumption that the document is valid or
9 invalid or that information contained in the document
10 is correct or incorrect."

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

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

14 INTRODUCED BY: 

S.B. NO. 174

Report Title:

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

Description:

Requires publicly held domestic corporations to have gender-diverse boards of directors. Establishes reporting requirements for the Director of Commerce and Consumer Affairs. Establishes penalties.

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

