

SB0076



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB0076

Introduced 1/23/2019, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

805 ILCS 5/8.90 new

Amends the Business Corporation Act of 1983. Requires a publicly held domestic or foreign corporation whose principal executive offices are located in Illinois to have: (i) no later than July 31, 2020, a minimum of one female director on its board; and (ii) no later than December 31, 2022, a minimum of 3 female directors if its number of directors is 6 or more, a minimum of 2 female directors if its number of directors is 5, or a minimum of one female director if its number of directors is 4 or fewer. Permits a corporation to increase the number of directors on its board to comply with the requirement. Requires the Secretary of State to publish reports on its Internet website that documents: (1) the number of domestic and foreign corporations whose principal executive offices are located in Illinois and who have at least one female director; and (2) the number of publicly held corporations that moved their United States headquarters to Illinois from another state or out of Illinois into another state during the preceding calendar year and other specified information. Permits the Secretary of State to adopt rules to administer the provisions and impose fines as specified. Provides that the provisions apply to a foreign corporation that is a publicly held corporation to the exclusion of the law of the jurisdiction in which the foreign corporation is incorporated. Effective immediately.

LRB101 07114 TAE 52151 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Corporation Act of 1983 is amended
5 by adding Section 8.90 as follows:

6 (805 ILCS 5/8.90 new)

7 Sec. 8.90. Female directors.

8 (a) Findings and policy.

9 (1) More female directors serving on boards of
10 directors of publicly held corporations will boost the
11 Illinois economy, improve opportunities for women in the
12 workplace, and protect Illinois taxpayers, shareholders,
13 and retirees, including retired State employees whose
14 pensions are managed by the State. Yet studies predict that
15 it will take 40 or 50 years to achieve gender parity, if
16 something is not done proactively.

17 (2) In May 2015 and again in May 2017, the General
18 Assembly passed resolutions urging that, within the next 3
19 years, all public companies in Illinois increase the number
20 of women on their boards of directors ranging from one to
21 3, depending upon the size of their boards. Five other
22 states have passed similar resolutions urging more female
23 directors on corporate boards in their states.

1 (A) A 2017 study by MSCI found that United States
2 companies that began the 5-year period from 2011 to
3 2016 with 3 or more female directors reported earnings
4 per share that were 45% higher than those companies
5 with no female directors at the beginning of the
6 period.

7 (B) In 2014, Credit Suisse found that companies
8 with at least one woman on the board had an average
9 return on equity of 12.2%, compared to 10.1% for
10 companies with no female directors. Additionally, the
11 price-to-book value of these firms was greater for
12 those with women on their boards: 2.4 times the value
13 in comparison to 1.8 times the value for zero-women
14 boards.

15 (C) A 2012 University of California, Berkeley
16 study entitled "Women Create a Sustainable Future"
17 found that companies with more women on their boards
18 are more likely to create a sustainable future by,
19 among other things, instituting strong governance
20 structures with a high level of transparency.

21 (D) Credit Suisse conducted a 6-year global
22 research study from 2006 to 2012, with more than 2,000
23 companies worldwide, showing that women on boards
24 improve business performance for key metrics,
25 including stock performance. For companies with a
26 market capitalization of more than \$10,000,000,000,

1 those with female directors on boards outperformed
2 shares of comparable businesses with all-male boards
3 by 26%.

4 (E) The Credit Suisse report included the
5 following findings:

6 (i) There has been a greater correlation
7 between stock performance and the presence of
8 women on a board since the financial crisis in
9 2008.

10 (ii) Companies with women on their boards of
11 directors significantly outperformed others when
12 the recession occurred.

13 (iii) Companies with women on their boards
14 tend to be somewhat risk averse and carry less
15 debt, on average.

16 (iv) Net income growth for companies with
17 women on their boards averaged 14% over a 6-year
18 period, compared with 10% for companies with no
19 female directors.

20 (4) Other countries have addressed the lack of gender
21 diversity on corporate boards by instituting quotas
22 mandating 30% to 40% of seats to be held by female
23 directors. Germany is the largest economy to mandate a
24 quota requiring that 30% of public company board seats be
25 held by women; in 2003, Norway was the first country to
26 legislate a mandatory 40% quota for female representation

1 on corporate boards. Since then, other European nations
2 that have legislated similar quotas include France, Spain,
3 Iceland, and the Netherlands.

4 (5) 43% of Illinois public companies in the Russell
5 3000 index have zero or only one woman on their boards of
6 directors. Of the Fortune 1000 companies headquartered in
7 Illinois, only 10% have 20% or more of their boards
8 comprised of women, and women hold only 19.5% of the board
9 seats overall.

10 (6) If measures are not taken to proactively increase
11 the numbers of women serving on corporate boards, studies
12 have shown that it will take decades, as many as 40 or 50
13 years, to achieve gender parity among directors,
14 including:

15 (A) A 2015 study conducted by the United States
16 Government Accountability Office estimated that it
17 could take more than 40 years for the numbers of women
18 on boards to match men.

19 (B) The 2017 Equilar Gender Diversity Index
20 revealed that it will take nearly 40 years for the
21 Russell 3000 companies nationwide to reach gender
22 parity – the year 2055.

23 (C) Nearly one-half of the 75 largest initial
24 public offerings from 2014 to 2016 went public with no
25 women on their boards.

26 (7) Further, several studies have concluded that

1 having 3 women on the board, rather than just one or none,
2 increases the effectiveness of boards, including:

3 (A)(i) According to the study entitled "Women
4 Directors on Corporate Boards From Tokenism to
5 Critical Mass", by M. Torchia, A. Calabrò, and M. Huse,
6 published in the Journal of Business Ethics in 2011,
7 and a report entitled "Critical Mass on Corporate
8 Boards: Why Three or More Women Enhance Governance",
9 attaining critical mass, going from one or 2 female
10 directors to at least 3 female directors, creates an
11 environment where women are no longer seen as outsiders
12 and are able to influence the content and process of
13 board discussions more substantially.

14 (ii) Boards of directors need to have at least 3
15 women to enable them to interact and exercise an
16 influence on the working style, processes, and tasks of
17 the board, in turn positively affecting the level of
18 organizational innovation within the firm they govern.

19 (B)(i) A 2016 McKinsey and Company study entitled
20 "Women Matter" showed nationwide that companies where
21 women are most strongly represented at board or
22 top-management levels are also the companies that
23 perform the best in profitability, productivity, and
24 workforce engagement.

25 (ii) Companies with 3 or more women in senior
26 management functions score even more highly, on

1 average, on the organizational performance profile,
2 than companies with no women on boards or in the
3 executive ranks. When there are at least 3 women on
4 corporate boards with an average membership of 10
5 directors, performance increases significantly.

6 (b) Definitions. As used in this Section:

7 "Female" means an individual who self-identifies her
8 gender as a woman, without regard to the individual's
9 designated sex at birth.

10 "Publicly held corporation" means a corporation or foreign
11 corporation with outstanding shares listed on a major United
12 States stock exchange.

13 (c) Composition of board of directors.

14 (1) No later than July 31, 2020, a publicly held
15 domestic or foreign corporation whose principal executive
16 offices, according to the corporation's Form 10-K, are
17 located in Illinois shall have a minimum of one female
18 director on its board. A corporation may increase the
19 number of directors on its board to comply with this
20 Section.

21 (2) No later than December 31, 2022, a publicly held
22 domestic or foreign corporation whose principal executive
23 offices, according to the corporation's Form 10-K, are
24 located in Illinois shall comply with the following:

25 (A) If its number of directors is 6 or more, the
26 corporation shall have a minimum of 3 female directors.

1 (B) If its number of directors is 5, the
2 corporation shall have a minimum of 2 female directors.

3 (C) If its number of directors is 4 or fewer, the
4 corporation shall have a minimum of one female
5 director.

6 (3) No later than December 1, 2020, the Secretary of
7 State shall publish a report on its Internet website
8 documenting the number of domestic and foreign
9 corporations whose principal executive offices, according
10 to the corporation's Form 10-K, are located in Illinois and
11 who have at least one female director.

12 (4) No later than March 1, 2021, and annually
13 thereafter, the Secretary of State shall publish a report
14 on its Internet website regarding, at a minimum, all of the
15 following:

16 (A) The number of corporations subject to this
17 Section that were in compliance with the requirements
18 of this Section during at least one point during the
19 preceding calendar year.

20 (B) The number of publicly held corporations that
21 moved their United States headquarters to Illinois
22 from another state or out of Illinois into another
23 state during the preceding calendar year.

24 (C) The number of publicly held corporations that
25 were subject to this Section during the preceding year,
26 but are no longer publicly traded.

1 (5) (A) The Secretary of State may adopt rules to
2 implement this Section. The Secretary of State may impose
3 finances for violations of this Section as follows:

4 (i) For failure to timely file board member
5 information with the Secretary of State pursuant to a
6 regulation adopted in accordance with this paragraph,
7 a fine of \$100,000.

8 (ii) For a first violation, a fine of \$100,000.

9 (iii) For a second or subsequent violation, a fine
10 of \$300,000.

11 (B) For the purposes of this paragraph, each director
12 seat required by this Section to be held by a female that
13 is not held by a female during at least a portion of a
14 calendar year shall count as a violation.

15 (C) For purposes of this paragraph, a female director
16 having held a seat for at least a portion of the year shall
17 not be a violation.

18 (D) Fines collected in accordance with this Section
19 shall be available, upon appropriation by the General
20 Assembly, for use by the Secretary of State to offset the
21 cost of administering this Section.

22 (d) This Section applies to a foreign corporation that is a
23 publicly held corporation to the exclusion of the law of the
24 jurisdiction in which the foreign corporation is incorporated.

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.