STATE OF NEW YORK

2916

2023-2024 Regular Sessions

IN SENATE

January 25, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to the number of female directors required to serve on the board of directors of certain publicly held corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The business corporation law is amended by adding a new section 702-a to read as follows:

§ 702-a. Appointment of female directors.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

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

(2) "Principal executive office" means the principal executive office according to the corporation's Form 10-K filed with the Securities and Exchange Commission.

(3) "Publicly held domestic or foreign corporation" means a domestic corporation or an authorized foreign corporation, as such terms are defined in subparagraphs (a) (4) and (a) (7) of section 102 (Definitions), respectively, with outstanding shares listed on a national securities exchange.

(b)(1) No later than December 31, 2024, a publicly held domestic or foreign corporation whose principal executive office is located within this state shall have a minimum of one female director on its board. A corporation subject to this section may increase the number of directors on its board, pursuant to section 702 (Number of directors), to comply with this section.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(2) No later than December 31, 2027, a publicly held domestic or foreign corporation whose principal executive office is located within this state shall comply, as applicable, with the following:

A. For a corporation with six or more directors, at least three female directors shall serve on its board.

B. For a corporation with five directors, at least two female directors shall serve on its board.

C. For a corporation with four directors or less, at least one female director shall serve on its board.

(3) A publicly held domestic or foreign corporation whose principal executive office is located within this state shall file with the secretary of state, on an annual basis, a list of all directors and each director's term of service, and shall identify the number of female directors serving on the board.

(c) No later than July 1, 2024, the secretary of state shall publish a report on its website documenting the number of domestic and foreign corporations whose principal executive office is located in this state and the number of female directors on each corporation's board.

(d) No later than March 1, 2025, and on an annual basis thereafter, the secretary of state shall publish a report on its website regarding, at minimum, all of the following:

(1) The number of corporations subject to this section that were in compliance with the requirements of this section during at least a portion of the preceding calendar year;

(2) The number of publicly held corporations that moved their United States headquarters to New York from another state or out of New York into another state during the preceding calendar year; and

(3) The number of publicly held domestic or foreign corporations that were subject to this section during the preceding year, but are no longer publicly traded.

(e) The secretary of state may adopt rules and regulations to implement this section. The secretary of state may impose fines for violations of this section as follows:

(1) For each director seat required to be held by a female pursuant to subparagraphs (b) (1) or (b) (2) of this section, which is not held by a female during at least a portion of a calendar year, a corporation shall be subject to a civil penalty of one hundred thousand dollars for a first violation and three hundred thousand dollars for each subsequent violation. For purposes of this subparagraph, a female director who held a director seat for at least a portion of the year shall not be a violation.

(2) Failure to file board member information in a timely manner with the secretary of state pursuant to subparagraph (b) (3) of this section, a corporation shall be subject to a civil penalty of one hundred thousand dollars.

(3) Any fine collected by the secretary of state pursuant to this section shall be used by the secretary of state to offset the cost of administering this section.

§ 2. Paragraph (a) of section 1319 of the business corporation law is amended by adding a new subparagraph 4-a to read as follows:

(4-a) Section 702-a (Appointment of female directors).

§ 3. This act shall take effect immediately.