

# House Bill 3110

Sponsored by Representative POWER, Senator PATTERSON, Representative BYNUM; Representative DEXTER, Senator FREDERICK

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires board of directors of publicly traded corporation to have specified proportion of female directors and directors who are members of underrepresented communities. Punishes violation of requirement with civil penalty of at least \$100,000.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to membership on the boards of directors of publicly traded corporations; creating new  
3 provisions; amending ORS 60.304; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 60.304 is amended to read:

6 60.304. (1) The articles of incorporation or bylaws may prescribe qualifications for directors. A  
7 director need not be a resident of this state or a shareholder of the corporation unless required by  
8 the articles of incorporation or bylaws.

9 (2)(a) **As used in this subsection:**

10 (A) **"Female" means an individual who identifies the individual's own gender as other**  
11 **than a male gender.**

12 (B) **"Publicly traded corporation" means a corporation:**

13 (i) **The principal executive offices of which, according to the corporation's filings with the**  
14 **federal Securities and Exchange Commission, are located within this state, without regard**  
15 **to the jurisdiction under which the corporation is formed, organized or incorporated; and**

16 (ii) **The shares of which are traded on an established exchange or securities market that**  
17 **is subject to the regulatory authority of this state, the United States or an agency or**  
18 **instrumentality of this state or the United States.**

19 (C) **"Underrepresented community" means a group composed primarily of:**

20 (i) **Individuals with low income or very low income, as those terms are defined in ORS**  
21 **458.610; or**

22 (ii) **Individuals who identify as:**

23 (I) **Black or African American;**

24 (II) **Hispanic or Latino;**

25 (III) **Asian or Asian American;**

26 (IV) **Native Hawaiian or Pacific Islander;**

27 (V) **American Indian or Alaska Native, having origins in one of the original peoples of**  
28 **North America;**

29 (VI) **Arabic or North African;**

30 (VII) **Middle Eastern;**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (VIII) Having a mixed racial or ethnic heritage; or

2 (IX) Having a racial or ethnic heritage that historically experienced or currently experi-  
3 ences health and economic disparities.

4 (b) A publicly traded corporation shall have a minimum of one female director and one  
5 director who is a member of an underrepresented community on the corporation's board of  
6 directors. A corporation may increase the number of directors on the board of directors to  
7 comply with this paragraph.

8 (c) A publicly traded corporation violates this subsection if the publicly traded corpo-  
9 ration:

10 (A) Fails to file information the Secretary of State requires by rule for the purposes of  
11 publishing the report described in paragraph (f) of this subsection; or

12 (B) Does not have on the publicly traded corporation's board of directors during eight  
13 or more months of the preceding calendar year the number of female directors or directors  
14 who are members of an underrepresented community required under paragraph (b) of this  
15 subsection. Each instance in which a female or member of an underrepresented community  
16 does not hold a position on a publicly traded corporation's board of directors that a female  
17 or member of an underrepresented community must hold to comply with this subparagraph  
18 is a violation.

19 (d) The Secretary of State, in accordance with ORS 183.745, shall impose the following  
20 civil penalties for violating this subsection:

21 (A) For a violation of paragraph (c)(A) of this subsection, \$100,000.

22 (B) For a first violation of paragraph (c)(B) of this subsection, \$100,000.

23 (C) For a second or subsequent violation of paragraph (c)(B) of this subsection, \$300,000.

24 (e) The Secretary of State shall deposit the proceeds of a fine under this subsection into  
25 the Operating Account established under ORS 56.041.

26 (f) Not later than July 1 of each year, the Secretary of State shall publish on the Secre-  
27 tary of State's website a report that lists the number of publicly traded corporations that:

28 (A) Have at least one female director and one director who is a member of an under-  
29 represented community;

30 (B) Complied with the requirements of this subsection during the preceding calendar  
31 year;

32 (C) Moved the principal executive offices into this state from outside this state or from  
33 this state to another jurisdiction; and

34 (D) Were subject to the requirements of this subsection during the preceding calendar  
35 year but are no longer publicly traded corporations.

36 (g) The Secretary of State shall adopt rules to implement the provisions of this sub-  
37 section.

38 **SECTION 2.** ORS 60.304, as amended by section 1 of this 2021 Act, is amended to read:

39 60.304. (1) The articles of incorporation or bylaws may prescribe qualifications for directors. A  
40 director need not be a resident of this state or a shareholder of the corporation unless required by  
41 the articles of incorporation or bylaws.

42 (2)(a) As used in this subsection:

43 (A) "Female" means an individual who identifies the individual's own gender as other than a  
44 male gender.

45 (B) "Publicly traded corporation" means a corporation:

1 (i) The principal executive offices of which, according to the corporation's filings with the fed-  
2 eral Securities and Exchange Commission, are located within this state, without regard to the ju-  
3 risdiction under which the corporation is formed, organized or incorporated; and

4 (ii) The shares of which are traded on an established exchange or securities market that is  
5 subject to the regulatory authority of this state, the United States or an agency or instrumentality  
6 of this state or the United States.

7 (C) "Underrepresented community" means a group composed primarily of:

8 (i) Individuals with low income or very low income, as those terms are defined in ORS 458.610;

9 or

10 (ii) Individuals who identify as:

11 (I) Black or African American;

12 (II) Hispanic or Latino;

13 (III) Asian or Asian American;

14 (IV) Native Hawaiian or Pacific Islander;

15 (V) American Indian or Alaska Native, having origins in one of the original peoples of North  
16 America;

17 (VI) Arabic or North African;

18 (VII) Middle Eastern;

19 (VIII) Having a mixed racial or ethnic heritage; or

20 (IX) Having a racial or ethnic heritage that historically experienced or currently experiences  
21 health and economic disparities.

22 *[(b) A publicly traded corporation shall have a minimum of one female director and one director*  
23 *who is a member of an underrepresented community on the corporation's board of directors. A corpo-*  
24 *ration may increase the number of directors on the board of directors to comply with this paragraph.]*

25 **(b)(A) The board of directors of a publicly traded corporation must have female directors**  
26 **and directors who are members of an underrepresented community in the following pro-**  
27 **portions:**

28 **(i) If the board of directors has four or fewer members, at least one director must be**  
29 **female and one must be a member of an underrepresented community.**

30 **(ii) If the board of directors has more than four members but fewer than nine members,**  
31 **at least two of the directors must be female and two must be members of an underrepre-**  
32 **sented community.**

33 **(iii) If the board of directors has nine or more members, the number of female directors**  
34 **may not be fewer than three and the number of directors who are members of an under-**  
35 **represented community may not be fewer than three, and the total number directors who**  
36 **are female and who are members of an underrepresented community may not be less than**  
37 **half of the total membership of the board of directors.**

38 **(B) A board of directors may not, in the report the board submits under paragraph (f)**  
39 **of this subsection, list the same individual as both a female director and a director who is a**  
40 **member of an underrepresented community for the purposes of complying with the require-**  
41 **ment set forth in subparagraph (A) of this paragraph.**

42 (c) A publicly traded corporation violates this subsection if the publicly traded corporation:

43 (A) Fails to file information the Secretary of State requires by rule for the purposes of publish-  
44 ing the report described in paragraph (f) of this subsection; or

45 (B) Does not have on the publicly traded corporation's board of directors during eight or more

1 months of the preceding calendar year the number of female directors or directors who are members  
 2 of an underrepresented community required under paragraph (b) of this subsection. Each instance  
 3 in which a female or member of an underrepresented community does not hold a position on a pub-  
 4 licly traded corporation's board of directors that a female or member of an underrepresented com-  
 5 munity must hold to comply with this subparagraph is a violation.

6 (d) The Secretary of State, in accordance with ORS 183.745, shall impose the following civil  
 7 penalties for violating this subsection:

8 (A) For a violation of paragraph (c)(A) of this subsection, \$100,000.

9 (B) For a first violation of paragraph (c)(B) of this subsection, \$100,000.

10 (C) For a second or subsequent violation of paragraph (c)(B) of this subsection, \$300,000.

11 (e) The Secretary of State shall deposit the proceeds of a fine under this subsection into the  
 12 Operating Account established under ORS 56.041.

13 (f) Not later than July 1 of each year, the Secretary of State shall publish on the Secretary of  
 14 State's website a report that lists the number of publicly traded corporations that:

15 *[(A) Have at least one female director and one director who is a member of an underrepresented*  
 16 *community;]*

17 *[(B)] (A)* Complied with the requirements of this subsection during the preceding calendar year;

18 *[(C)] (B)* Moved the principal executive offices into this state from outside this state or from this  
 19 state to another jurisdiction; and

20 *[(D)] (C)* Were subject to the requirements of this subsection during the preceding calendar year  
 21 but are no longer publicly traded corporations.

22 (g) The Secretary of State shall adopt rules to implement the provisions of this subsection.

23 **SECTION 3. (1) The amendments to ORS 60.304 by section 1 of this 2021 Act become op-**  
 24 **erative on January 1, 2022.**

25 **(2) The amendments to ORS 60.304 by section 2 of this 2021 Act become operative on**  
 26 **January 1, 2023.**

27 **(3) The Secretary of State may adopt rules and take any other action before the operative**  
 28 **date specified in subsection (1) of this section that is necessary to enable the Secretary of**  
 29 **State, on and after the operative date specified in subsection (1) of this section, to undertake**  
 30 **or exercise the duties, functions and powers conferred on the Secretary of State by the**  
 31 **amendments to ORS 60.304 by section 1 of this 2021 Act.**

32 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
 33 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**