

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 4274

(SENATE AUTHORS: LÓPEZ FRANZEN, Kunesh, Pappas and Torres Ray)

DATE	D-PG	OFFICIAL STATUS
03/24/2022	5611	Introduction and first reading
		Referred to Civil Law and Data Practices Policy
03/28/2022	5661	Authors added Pappas; Torres Ray

1.1 A bill for an act

1.2 relating to corporations; requiring publicly held corporations to have a minimum

1.3 number of female directors and directors from underrepresented communities;

1.4 imposing penalties; requiring reports; proposing coding for new law in Minnesota

1.5 Statutes, chapter 302A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[302A.204] PUBLICLY HELD CORPORATIONS; MINIMUM**

1.8 **REQUIREMENTS FOR GENDER AND RACIAL DIVERSITY.**

1.9 Subdivision 1. Legislative findings and purpose. (a) The legislature finds and declares

1.10 as follows:

1.11 (1) more racially and gender diverse boards of directors further the goals of the

1.12 Sarbanes-Oxley Act of 2002, which pushed for more independent boards of directors that

1.13 decrease the likelihood of corporate fraud;

1.14 (2) more women directors serving on boards of directors of publicly held corporations

1.15 boosts the Minnesota economy and improves opportunities for women in the workplace;

1.16 (3) directors that hold numerous board of directors seats exert considerable influence

1.17 over United States corporations and broader society. As a director gains a seat on more

1.18 boards of directors, the director gains influence over the creation of policy in more companies

1.19 and rise in corporate status amongst the corporate elite, which in turn enhances the director's

1.20 influence on the creation of policy;

1.21 (4) numerous independent studies have concluded that publicly held corporations perform

1.22 better when women serve on the boards of directors, including:

2.1 (i) a 2017 study by Morgan Stanley Capital International finding that companies that
2.2 began the five-year period from 2011 to 2016 with three or more female directors reported
2.3 earnings per share that were 45 percent higher than those companies with no female directors
2.4 at the beginning of the period;

2.5 (ii) a 2014 Credit Suisse study finding that companies with at least one woman on the
2.6 board of directors had an average return on equity of 12.2 percent, compared to 10.1 percent
2.7 for companies with no female directors; and

2.8 (iii) a Credit Suisse six-year global research study from 2006 to 2012, with more than
2.9 2,000 companies worldwide, showing that women on boards of directors improve business
2.10 performance for key metrics, including stock performance;

2.11 (5) the United States Bureau of Labor Statistics reported that in the year 2019, 90 percent
2.12 of chief executives were white; additionally, according to the United States Bureau of Labor
2.13 Statistics, only 31 percent of African Americans and 22 percent of Latinos worked in
2.14 management, professional, and related occupations while 54 percent of Asians and 41
2.15 percent of whites worked in the same occupation;

2.16 (6) according to 2018 data from Deloitte and the Alliance for Board Diversity, the
2.17 percentages of Fortune 500 company board of directors seats held by people identified as
2.18 African American or Black; Hispanic, Latino, or Latina; and Asian or Pacific Islander were
2.19 8.6 percent, 3.8 percent, and 3.7 percent, respectively; and

2.20 (7) experts argue that affirmative action plans to increase the representation of women
2.21 and minorities in historically underrepresented fields and occupations further the legislative
2.22 goals of the Civil Rights Act of 1964. In the Civil Rights Act of 1964, it is clear that Title
2.23 VII:

2.24 (i) directly permits the imposition of affirmative action plans to address past
2.25 discrimination and patterns of discrimination;

2.26 (ii) permits state actors to create affirmative action plans designed to increase
2.27 representation of women and minorities in job positions in which they are historically
2.28 underrepresented, provided the plans are moderate, temporary, and designed and intended
2.29 to attain a balanced workforce; and

2.30 (iii) does not forbid private actors from voluntarily creating action plans to increase
2.31 representation of women and minorities, provided the plans are temporary and do not create
2.32 an absolute bar to white or male employees.

3.1 (b) Therefore, it is the intent of the legislature to require every publicly held corporation
3.2 in Minnesota to achieve diversity on the corporation's board of directors by having a
3.3 minimum number of female directors and directors from underrepresented communities on
3.4 the corporation's board of directors, as specified in this section.

3.5 Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the
3.6 meanings given.

3.7 (b) "Director from an underrepresented community" means an individual who
3.8 self-identifies as (1) Black, African American, Hispanic, Latino, Asian, Pacific Islander,
3.9 Native American, Native Hawaiian, or Alaska Native, or (2) gay, lesbian, bisexual, or
3.10 transgender.

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

3.13 Subd. 3. **Required minimum representation.** (a) No later than the close of the 2023
3.14 calendar year, a publicly held corporation whose principal executive office, according to
3.15 the corporation's United States Securities and Exchange Commission (SEC) 10-K form, is
3.16 located in Minnesota must have a minimum of one female director and one director from
3.17 an underrepresented community on the corporation's board of directors.

3.18 (b) No later than the close of the 2024 calendar year, a publicly held corporation whose
3.19 principal executive office, according to the corporation's SEC 10-K form, is located in
3.20 Minnesota must comply with the following:

3.21 (1) if the corporation's total number of directors is six or more, the corporation must
3.22 have a minimum of two female directors and two directors from an underrepresented
3.23 community; or

3.24 (2) if the corporation's total number of directors is five or fewer, the corporation must
3.25 have a minimum of one female director and one director from an underrepresented
3.26 community.

3.27 (c) A corporation may increase the number of directors on the corporation's board of
3.28 directors to comply with this section.

3.29 Subd. 4. **Reports.** (a) No later than January 15, 2024, and annually thereafter, a publicly
3.30 held corporation subject to subdivision 2 must file a report with the secretary of state stating
3.31 the number of total directors on the corporation's board of directors, the number of female
3.32 directors, and the number of directors from an underrepresented community.

4.1 (b) No later than March 1, 2024, and annually thereafter, the secretary of state must
4.2 publish a report on the secretary of state's website stating, at a minimum, the following
4.3 information:

4.4 (1) the number of publicly held corporations whose principal executive office, according
4.5 to the corporation's SEC 10-K form, is located in Minnesota and which have at least one
4.6 female director and one director from an underrepresented community;

4.7 (2) the number of publicly held corporations subject to this section that complied with
4.8 the requirements of this section during at least one point during the preceding calendar year;

4.9 (3) the number of publicly held corporations that moved their United States headquarters
4.10 to Minnesota from another state or out of Minnesota into another state during the preceding
4.11 calendar year; and

4.12 (4) the number of publicly held corporations that were subject to this section during the
4.13 preceding year, but are no longer publicly traded.

4.14 Subd. 5. **Penalty.** (a) The secretary of state may impose fines for violations of this section
4.15 as follows:

4.16 (1) for failure to timely file board of directors member information with the secretary
4.17 of state pursuant to subdivision 3, \$100,000;

4.18 (2) for a first violation of subdivision 2, \$100,000; and

4.19 (3) for a second or subsequent violation of this section, \$300,000.

4.20 (b) For the purposes of this subdivision, each director seat required by this section to be
4.21 held by a female or a director from an underrepresented community that is not held by a
4.22 female or a director from an underrepresented community during at least a portion of a
4.23 calendar year is a violation.