

Chapter 514

(Senate Bill 911)

AN ACT concerning

Gender Diversity in the Boardroom – Annual Report ~~or Nonprofit Sales and Use Tax Exemption Application~~

FOR the purpose of establishing the intent of the General Assembly to promote gender diversity in corporate management and boardrooms; ~~requiring a certain entity applying to the Comptroller to qualify as an organization to which a sale is exempt from certain sales and use taxes to include in the application certain information relating to the female representation on the applicant’s board of directors;~~ requiring a certain entity submitting a certain annual report to the State Department of Assessments and Taxation to include in the report certain information relating to female representation on the entity’s board of directors; providing for the application of this Act; requiring the Comptroller to make a certain report to the General Assembly on or before a certain date each year; providing for the termination of this Act; and generally relating to gender diversity in corporate management and boardrooms.

~~BY repealing and reenacting, without amendments,
Article – Tax – General
Section 11–204(a)(3) and (5)
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)~~

~~BY repealing and reenacting, with amendments,
Article – Tax – General
Section 11–204(e)
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Tax – Property
Section 11–101
Annotated Code of Maryland
(2012 Replacement Volume and 2018 Supplement)

Preamble

WHEREAS, Equitable and diverse gender representation in the leadership ranks of companies in the State of Maryland is essential to enhance the competitive position of the State in the global economy; and

WHEREAS, The Executive Alliance, a nonprofit organization of women executive leaders actively working to leverage the collective power of women's leadership in the State of Maryland, reported in its ~~2016~~ 2018 "Census of Women Board Directors in Maryland" that women held ~~14.4%~~ 16.8% of board seats ~~and 12.3% of executive positions at the 76 publicly traded companies headquartered in the State;~~ and

~~WHEREAS, Of those 76 companies, 36 have no women in executive positions, 23 have no women on their boards of directors, and 14 have no women on their boards of directors or in their executive suites; and~~

WHEREAS, Of the 70 publicly traded companies headquartered in the State in 2018, 27 have no women in executive positions, 15 have no women on their boards of directors, and 6 have no women on their boards of directors or in their executive suites; and

WHEREAS, According to the Maryland Commission for Women, women make up 49% of the labor force in Maryland; and

WHEREAS, Deloitte's Missing Pieces Report, which included a 2016 census of diversity on Fortune 500 corporate boards, found that minority women are even less represented, with African American women holding only 2.2% of board seats, Asian women holding only 0.081%, and Latina women holding only 0.075%; and

WHEREAS, A McKinsey & Company study entitled "Women Matter" showed that companies where women are most strongly represented at board or top management levels are also the companies that perform the best; companies with three or more women in senior management functions score more highly, on average, on the organizational performance profile than companies with no women at the top; and company performance increases significantly once a certain critical mass is attained – specifically, when there are at least three women on management committees with an average membership of 10 people, performance improves dramatically; and

WHEREAS, Commencing in 2006, Credit Suisse conducted a 6-year global research study of more than 2,000 companies worldwide that showed that women on boards improve business performance by key metrics, including stock performance, as demonstrated by the fact that companies with a market capitalization of more than \$10 billion, whose boards have women, outperformed shares of comparable businesses with all-male boards by 26%; and

WHEREAS, The Credit Suisse report included the following findings:

(1) There has been a greater correlation between stock performance and the presence of women on a board since the financial crisis in 2008;

(2) Companies with women on their boards significantly outperformed others when the recession occurred;

(3) Companies with women on their boards tend to be relatively risk-averse and carry less debt, on average; and

(4) Net income growth for companies with women on their boards averaged 14% over a 6-year period, compared with 10% for those with no women directors; and

WHEREAS, An Oklahoma State University study found that board diversity, including gender and ethnicity, is associated with improved financial value and that a significant positive relationship exists between the fraction of women or minorities on the board and the value of the firm; and

WHEREAS, The Catalyst Research Center for Equity in Business Leadership report entitled “Women on Corporate Boards Globally” found that companies with more women on boards had better financial results, on average, than other companies, and that companies with sustained high representation of women board directors, defined as having three or more women board directors in at least 4 of 5 years, significantly outperformed those with sustained low representation by 84% on return on sales, 60% on return on invested capital, and 46% on return on equity; and

WHEREAS, Catalyst’s report “Women on Corporate Boards Globally” also cites findings that companies with fewer women on boards had more governance-related controversies than average; and

WHEREAS, Catalyst found a clear and positive correlation between the percentage of women board directors in the past and the percentage of women corporate officers in the future; and

WHEREAS, Catalyst found that (1) women board directors appeared to have a greater effect on increasing the percentage of line positions held by women than they did on staff positions and (2) line experience is necessary for advancement into chief executive officer and top leadership positions; and Catalyst’s annual censuses show that, historically, women are underrepresented in those roles; and

WHEREAS, Executive Alliance’s Census report has shown little improvement in the representation of women on corporate boards in Maryland over the last 10 years; and

WHEREAS, Women in the Workplace 2016, a comprehensive study of the state of women in corporate America conducted by LeanIn.Org and McKinsey & Company, emphasized that (1) women are less likely to receive the first critical promotion to manager – so far fewer end up on the path to leadership; (2) women are less likely to be hired into more senior positions; and (3) women also get less access to the people, input, and opportunities that accelerate careers – thus, the higher you look in companies, the fewer women you see; and

WHEREAS, Catalyst’s report “Women on Corporate Boards Globally” indicated that research from many scholars and organizations, including Catalyst, had found that three

or more women serving on a board “changes boardroom dynamics substantially”, “enhances the likelihood that women’s voices and ideas are heard”, and “creates a ‘critical mass’ of women which can lead to better financial performance”; and

WHEREAS, The Maryland General Assembly finds that the State of Maryland has a significant stake in promoting equitable and diverse gender representation in the public, private, and nonprofit leadership ranks of Maryland companies, institutions, and State and local government; and

WHEREAS, The Senate of Maryland and the House of Delegates urge that by December 31, 2022, all nonprofit, privately held, and publicly traded institutions and companies doing business in the State of Maryland have a minimum of 30% of women directors and measure their progress toward a goal of equal representation of men and women in leadership positions on an annual basis; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

~~Article Tax General~~

~~11-204.~~

~~(a) The sales and use tax does not apply to:~~

~~(3) a sale to a nonprofit organization made to carry on its work, if the organization:~~

~~(i) 1. is located in the State;~~

~~2. is located in an adjacent jurisdiction and provides its services within the State on a routine and regular basis; or~~

~~3. is located in an adjacent jurisdiction whose law:~~

~~A. does not impose a sales or use tax on a sale to a nonprofit organization made to carry on its work; or~~

~~B. contains a reciprocal exemption from sales and use tax for sales to nonprofit organizations located in adjacent jurisdictions similar to the exemption allowed under this subsection;~~

~~(ii) is a charitable, educational, or religious organization;~~

~~(iii) is not the United States; and~~

~~(iv) except for the American National Red Cross, is not a unit or instrumentality of the United States;~~

~~(5) a sale to a volunteer fire company or department or volunteer ambulance company or rescue squad located in the State made to carry on the work of the company, department, or squad;~~

~~(e) (1) To qualify as an organization to which a sale is exempt under subsection (a)(3) or (5) of this section, the organization shall file an application for an exemption certificate with the Comptroller.~~

~~(2) IF THE APPLICANT HAS AN OPERATING BUDGET EXCEEDING \$5,000,000, THE APPLICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE THE PERCENTAGE OF FEMALE MEMBERSHIP ON THE APPLICANT'S BOARD OF DIRECTORS.~~

Article – Tax – Property

11-101.

(a) On or before April 15 of each year, a person shall submit a report on personal property to the Department if:

(1) the person is a business trust, statutory trust, domestic corporation, limited liability company, limited liability partnership, or limited partnership;

(2) the person is a foreign corporation, foreign statutory trust, foreign limited liability company, foreign limited liability partnership, or foreign limited partnership registered or qualified to do business in the State; or

(3) the person owns or during the preceding calendar year owned property that is subject to property tax.

(b) The report shall:

(1) be in the form that the Department requires;

(2) be under oath as the Department requires; and

(3) contain the information that the Department requires.

(c) (1) THIS SUBSECTION DOES NOT APPLY TO A PRIVATELY HELD COMPANY IF AT LEAST 75% OF THE COMPANY'S SHAREHOLDERS ARE FAMILY MEMBERS.

(2) IF THE PERSON SUBMITTING THE REPORT IS A ~~PUBLICALLY TRADED INSTITUTION OR COMPANY~~ TAX-EXEMPT, DOMESTIC NONSTOCK CORPORATION WITH AN OPERATING BUDGET EXCEEDING \$5,000,000, OR A DOMESTIC STOCK CORPORATION WITH TOTAL SALES EXCEEDING \$5,000,000, THE REPORT REQUIRED BY THE DEPARTMENT SHALL INCLUDE THE ~~PERCENTAGE~~ NUMBER OF FEMALE ~~MEMBERSHIP~~ BOARD MEMBERS AND THE TOTAL NUMBER OF MEMBERS ON THE PERSON'S BOARD OF DIRECTORS.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before January 1 of each year, the Comptroller shall:

(1) report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the percentage of female representation on the boards of directors for all entities filing a report ~~or making an application~~ described in this Act; and

(2) make the report ~~publically~~ publicly available on the Comptroller's website.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019. It shall remain effective for a period of 10 years and, at the end of September 30, 2029, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 13, 2019.