

**RCW 23B.08.120 Gender-diverse board of directors—Board diversity discussion and analysis—Remedy for failure to comply.** (1) Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors or that public company must comply with the requirements in subsection (2) of this section. For purposes of this section, a public company is deemed to have a gender-diverse board of directors if, for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprised at least twenty-five percent of the directors serving on the board of directors.

(2) If a public company does not have a gender-diverse board of directors as specified in subsection (1) of this section for at least two hundred seventy days of the fiscal year preceding the applicable annual meeting of shareholders, the public company must deliver to its shareholders a board diversity discussion and analysis, which meets the requirements of subsection (3) of this section. This information must be delivered to all shareholders entitled to vote at that annual meeting of shareholders no fewer than ten nor more than sixty days before the date of that meeting.

(3) If a public company is required under subsection (2) of this section to deliver to its shareholders a board diversity discussion and analysis, the discussion and analysis must include information regarding the public company's approach to developing and maintaining diversity on its board of directors. At a minimum, this discussion and analysis should include the following information:

(a) A discussion regarding how the board of directors, or an appropriate committee thereof, considered the representation of any diverse groups in identifying and nominating candidates for election as directors in connection with the last annual meeting of shareholders, and if the board of directors, or an appropriate committee thereof, did not consider the representation of any diverse groups, the discussion should explain the reasons it did not;

(b) A discussion regarding any policy adopted by the board of directors, or an appropriate committee thereof, relating to identifying and nominating members of any diverse groups for election as directors, and if the board of directors, or an appropriate committee thereof, has not adopted such a policy, the discussion should explain the reasons it has not; and

(c) A discussion of the public company's use of mechanisms of refreshment of the board of directors, such as term limits and mandatory retirement age policies for its directors, and if the public company does not use any such mechanisms, the discussion should explain the reasons it does not.

(4) The requirements of subsection (2) of this section are satisfied if a public company:

(a) Posts the information required by subsection (3) of this section on the public company's principal internet website address or another electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law); or

(b) Includes the information required by subsection (3) of this section in a proxy statement filed in accordance with 17 C.F.R. Sec. 240.14a-1 through 17 C.F.R. Sec. 240.14a-101, or in an information statement filed in accordance with 17 C.F.R. Sec. 240.14c-1 through 17 C.F.R. Sec. 240.14c-101.

(5) This section does not apply to any public company:

(a) That does not have outstanding shares of any class or series listed on a United States national securities exchange;

(b) That is an "emerging growth company" or a "smaller reporting company" as defined in 17 C.F.R. Sec. 240.12b-2;

(c) Of which voting shares entitled to cast votes comprising more than fifty percent of the voting power of the public company are held by a person or group of persons;

(d) Of which its articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040; or

(e) That is not required by this chapter or the rules of any United States national securities exchange to hold an annual meeting of shareholders.

(6) The failure of a public company to comply with this section does not affect the validity of any corporate action. Nothing in this section alters the general standards for any director of a public company.

(7) The exclusive remedy for any failure of a public company to comply with this section is that any shareholder of that public company entitled to vote in the election of directors at an annual meeting, after notice to the public company, may apply to the superior court of the county in which the public company's registered office is located for an order to deliver to shareholders the information required by subsection (3) of this section if the public company fails to furnish that information in accordance with this section, in which case the court, after notice to the public company, may summarily order the public company to furnish to shareholders that information.

(8) For the purposes of this section:

(a) "Diverse groups" means women, racial minorities, and historically underrepresented groups.

(b) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a public company.

(c) "Voting shares" means shares of all classes of a public company entitled to vote generally in the election of directors.  
[2020 c 194 § 1.]

**Short title—2020 c 194 § 1:** "Section 1 of this act may be known and cited as the women on corporate boards act." [2020 c 194 § 16.]