

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on Senate Bill 826 from the 2018 legislative session concerning California's new mandate on women on publicly traded corporate boards.

Governor Brown signed Senate Bill 826 by State Senator Hannah-Beth Jackson on September 30th. It was Chapter 954. It adds two new sections to California's Corporations Code.

It basically requires every publicly held corporation whose principal executive offices are located in the state of California to have a specified minimum number of women on its board of directors.

It also requires the California Secretary of State to review and issue reports regarding corporate compliance with the bill's provisions and authorizes the Secretary of State to impose fines for any violations of that bill.

The Legislature did make some modifications to the bill before they sent it down to the Governor for final action, including the addition of fine for failure to timely file board member information with the Secretary of State. They modified the dollar amounts of the fines imposed for both the first and subsequent violations of the law.

They clarified that a female director that holds a board seat for at least a portion of the year shall not represent a violation of the bill.

What the bill essentially states is that no later than March 1, 2020 and annually thereafter, the Secretary of State will publish a report on its website that contains specified information. Again, it authorizes the Secretary of State to impose fines for violations of the bill.

These failures are quite substantial. Failure to timely file board member information, first violation is \$100,000. For a second or subsequent violation, the amount goes up to \$300,000 per violation.

Section One of the bill, which represents most of the bill's contents, sets forth numerous legislative findings and decorations. In Section Two of the bill, it adds Section 301.3 to the Corporations Code, which we'll cover in a moment.

Then it also adds Section 211.5.5 to the Corporations Code that essentially sets forth the requirements that will apply to a foreign corporation -- that is a publicly held corporation -- to the exclusion of the law, the jurisdiction in which that foreign corporation is incorporated.

What this new section of the Corporations Code says is that no later than the close of the 2019 calendar year, every domestic general corporation or foreign corporation that is publicly held, and whose principle executive office according to the corporation's SEC 10-K form is located in California, must have a minimum of one female on its board of directors.

Thereafter, the bill specifies that no later than the end of the 2021 calendar year, the required minimum number must be two female directors if the corporation has five directors or three female directors if the corporation has six or more directors.

It also specifies that a corporation may increase the number of directors on its board in order to comply with these provisions. It specifies that a female director, as I mentioned before, that has, or holds a seat for at least a portion of the year, is not to be deemed a violation of the law.

This bill has gotten a lot of press attention. Numerous legal scholars have questioned its constitutionality. We'll have to wait and see once it's implemented at the end of 2019 whether or not a publicly-traded corporation undoubtedly incorporated out of state, perhaps in Delaware, actually challenges this new statute.

Thanks for joining this podcast.