

What Those Outside Delaware Say About SB 21

Article By:

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I recently attended a [seminar in New York on D&O litigation developments called the PLUS Symposium](#). The topics lean towards the concerns of those who defend D&O cases and provide D&O coverage.

I listened to a panel entitled: “Hot Topics in D&O 2025”. None of the panel members were Delaware lawyers or members of the Delaware judiciary or the Delaware legislative branch, but they litigate in Delaware or broker D&O insurance to Delaware companies.

Naturally, the status of SB 21 was the focus of much of the panel discussion. Since the introduction of SB 21, and amendments earlier this week, an avalanche of articles have been written about the proposed changes to the Delaware General Corporation Law. See, e.g., [here](#) and [here](#).

Highlights:

- Like most people, the panelists don’t know for sure what impact SB 21 will have if it passes—or if it doesn’t pass—but the assumption was that if SB 21 passes it would reduce litigation in Delaware at least related to some types of cases.
- Apparently, Texas has recently introduced somewhat similar legislation.
- One panelist suggested that the restrictions on Section 220 demands that SB 21 would impose will reduce many plenary cases. For example, one panel member suggested that the Boeing case would not likely have been possible without all the emails, etc., the plaintiffs obtained in a prior Section 220 demand.
- Another panelist suggested that regardless of SB 21, other aspects of litigating in Delaware, such as the CCLD division of Superior Court, would still provide benefits from being able to litigate in Delaware.
- Another panel member saw it as ironic that the legislature was attempting to use SB 21 to counteract decisions of the judiciary—but the judiciary is apparently one of the reasons why corporate entities are attracted to Delaware.
- The prediction of at least one panel member was that the outcome of SB 21 will be the biggest topic in the D&O world for 2025.

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