Published on *The National Law Review* https://natlawreview.com

Delaware Enacts Significant Changes to Delaware General Corporation Law

Article By:

Nicholas O'Keefe

Eric G. Pearson

John K. Wilson

Harper F. Brown

As discussed in Foley's Corporate Governance Update last month, SB 21: Delaware Responds In The DExit Battle, the Delaware legislature has been moving quickly to ensure that Delaware remains the preeminent home of choice for many corporations by amending the DGCL. The comprehensive changes, known as SB 21, became law on March 25, 2025, when the Delaware House of Representatives passed the Bill, and Delaware Governor Matt Meyer signed it into law. A copy of SB 21 as finally adopted is available here.

Delaware's legislature and Governor acted with dispatch to pass a law with a number of changes intended to reduce litigation targeting directors, officers, and controlling stockholders. Our previous update contained a detailed explanation of the Bill. Here is a summary of the most notable changes to DGCL Section 144 and DGCL Section 220:

- **Raising the bar for deeming a stockholder to be a "controlling stockholder".** One of the major criticisms of existing case law is the scope creep in the definition of who is a controlling stockholder. This has significant implications because having a controlling stockholder on both sides of a transaction pushes the standard of review into the enormously pro-plaintiff entire fairness standard. The new law effectively introduces a floor of one-third ownership in order to be deemed to be a controlling stockholder.
- **Easing the standard for shielding controlling stockholder transactions from judicial review outside the "going private" context.** Recent case law required the double protections of approval by both disinterested and independent directors and a majority of minority stockholders in order to obtain the business judgment standard of review. The new law only requires one of these two protections. It also further relaxes the standard in other ways, such as by relaxing the test for directors of listed companies to be deemed disinterested, and lowering the voting standard for obtaining majority of minority stockholder approval.

- **Narrowing the ability to make Books-and-records demands.** The scope of available books-and-records under DGCL Section 220 has been narrowed under most circumstances to exclude emails, text messages, or informal board communications, and to limit books and records to a three-year look-back. In addition, a complainant must now show a “proper purpose” for any books-and-records demand and must do so with “reasonable particularity” while showing that the requested materials are “specifically related” to that purpose. These changes give Delaware corporations more tools to fight back against nuisance requests.

SB 21 was signed into law only 36 days after it was first introduced—in large part due to the legislature’s bypassing the normal process for amending the DGCL. In the House, the Bill faced nearly two hours of debate and five failed amendments. The motive for acting quickly was clear and explicit: Governor Meyer had asked for a bill like SB 21 to be on his desk by month’s end in an effort to preserve Delaware’s status as the preeminent place to incorporate in response to a growing movement by companies to exit the State following some unfavorable decisions from the State’s judiciary over the last few years.

Notably, the amendments to Sections 144 and 220 apply retroactively unless (1) an action commenced in court concerning an act or transaction is already completed or pending or (2) a books-and-records demand was made on or before February 17, 2025, when SB 21 was first introduced in the Delaware Senate.

SB 21’s changes to the DGCL have been heralded by some in the legal community, but criticized by others as engaging in a race-to-the-bottom with Texas and Nevada that risks long-term repercussions because they push Delaware’s carefully constructed balance too much in favor of corporate controllers and insiders and away from the rights of minority stockholders. Only time will tell whether Delaware remains the domicile of choice for so many of America’s corporations, but the State’s legislative and executive branches have made quite clear that they intend to do whatever is in their power to preserve the advantages of incorporating in the State.

National Law Review, Volume XV, Number 94