

SB 21 Survives: Delaware Supreme Court Confirms Validity of DGCL Amendments



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On February 27, 2026, in [Rutledge v. Clearway Energy Group LLC](#), the Delaware Supreme Court upheld the constitutionality of Delaware Senate Bill 21 (SB 21), which amends § 144 of the Delaware General Corporation Law.

SB 21 introduces a statutory definition of “controlling stockholder” and establishes a safe harbor for controlling-stockholder transactions: For non-going-private transactions, such transactions are insulated from equitable relief or damages—and reviewed under the business judgment rule rather than the entire fairness standard—if they are approved either by a disinterested board committee or by an informed, uncoerced vote of a majority of disinterested shareholders. For going-private transactions, both protections are required.

The Court’s decision resolves uncertainty about SB 21’s constitutionality and allows practitioners to rely on its framework with confidence.

Senate Bill 21: A Brief Overview

SB 21, enacted in March 2025, amends the Delaware General Corporation Law by revising §§ 144 and 220. Its key changes are:

- **Definition of controlling stockholder** – SB 21 creates statutory definitions of “controlling stockholder” and “control group,” encompassing persons who, together with affiliates and associates, hold a majority of voting power or otherwise exercise managerial authority over the corporation.^[1]
- **Safe harbor for controlling stockholder transactions** – For non-going-private transactions, a controlling-stockholder transaction is insulated from equitable relief or damages—and reviewed under the business judgment rule rather than the entire fairness standard—if it is approved either (i) by a disinterested committee of directors or (ii) by an informed, uncoerced vote of a majority of disinterested shareholders.^[2] The statute codifies mechanisms previously developed in case law and permits either to trigger safe-harbor protection.^[3]
- **Dual-cleansing still required for freeze-out deals – For going-private transactions**, SB 21 preserves the “MFW”^[4] rule for freeze-out (going-private) deals: both a special, independent committee approval **and** a majority-of-the-minority (disinterested stockholder) vote must be obtained for the transaction to qualify for the business judgment rule.^[5]
- **Reform of stockholder inspection demands (§ 220)** – SB 21 requires written demands under oath, made in good faith for a proper purpose, with reasonable particularity. Requested records must be specifically related to that purpose; the court may order functional equivalents and, for records outside the statutory categories, the demanding shareholder must show a compelling need supported by clear and convincing evidence.^[6]

- **Retroactive effect** – The amendments apply to “all acts and transactions, whether occurring before, on, or after” the enactment date, except for actions or proceedings completed or pending on or before February 17, 2025.^[7]

The Challenge and the Court’s Holding

Shortly after SB 21 became law, Thomas Drew Rutledge— a stockholder of Clearway Energy, Inc.— filed a derivative suit challenging a \$117 million asset purchase with Clearway’s controlling stockholder and attacked the constitutionality of SB 21’s “safe harbor” provisions.^[8] Rutledge argued that the provisions unlawfully curtailed the Court of Chancery’s equitable jurisdiction and retroactively extinguished vested claims.^[9] The Court of Chancery certified the constitutional questions to the Delaware Supreme Court.

The Supreme Court upheld the amendment’s constitutionality, concluding that the safe-harbor provisions do not divest the Court of Chancery of jurisdiction over breach-of-fiduciary-duty claims and do not violate due process by impairing vested rights.^[10] The Court explained that SB 21 merely provides a statutory framework for evaluating such claims while preserving the court’s role in determining whether the safe-harbor conditions are satisfied.^[11] Applying rational-basis review, the Court held that the statute’s retroactive application was constitutional and that Rutledge’s asserted interest was merely an expectation of prior law, not a vested right.^[12]

Why *Rutledge* Matters

Rutledge resolves uncertainty surrounding SB 21 and confirms that its safe-harbor framework operates within, rather than in place of, Delaware’s traditional equitable oversight.

SB 21 codifies existing safeguards but departs from *Match*^[13] for non-going-private transactions.^[14] Rather than requiring both a special committee and majority-of-the-minority vote, the statute permits either mechanism to invoke business judgment review.^[15] It also replaces the prior transaction-specific control analysis with a broader statutory definition of “controlling stockholder.”^[16]

By resolving these constitutional issues, *Rutledge* gives companies a predictable framework for structuring controlling stockholder transactions, reaffirms the General Assembly’s authority over Delaware corporate law, and may help curb the trend of firms seeking alternative incorporation forums.^[17]

Practical Takeaways

- The SB 21 safe-harbor framework has been upheld as constitutional and may be relied upon with confidence.
- For non-going-private transactions, a single cleansing mechanism—either committee approval or a majority-of-the-minority vote—now suffices.
- For going-private (freeze-out) deals, dual protections remain required under the *MFW*.
- SB 21, as affirmed in *Rutledge*, defines a controlling stockholder as any person—together with their affiliates and associates—who either holds a majority (or functional equivalent) of voting power or owns at least 33% of the voting power and can exercise managerial authority over the corporation, supplanting the prior transaction-specific control test.
- The safe-harbor provisions apply retroactively to all transactions, regardless of when they occurred, except for actions that were already completed or pending as of February 17, 2025.
- The decision reaffirms the General Assembly’s authority over Delaware corporate law and the strong presumption of constitutionality afforded to its enactments.

[1] 8 Del. C. § 144(e)(1)–(2).

[2] *Id.* § 144(b)(1)–(2).

[3] See *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929 (Del. 1985); *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110 (Del. 1994).

[4] *Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014).

[5] 8 Del. C. § 144(c).

[6] *Id.* § 220.

[7] S.B. 21, 153d Gen. Assemb. § 3 (2025).

[8] *Rutledge*, 2026 WL 548504 at *1.

[9] *Id.*

[10] *Id.* at *14.

[11] *Id.* at *2.

[12] *Id.* at *13.

[13] *In re Match Grp., Inc. Derivative Litig.*, 315 A.3d 446, 451 (Del. 2024) (extending MFW's dual-cleansing requirement to all controlling-stockholder transactions—not just freeze-outs).

[14] *Rutledge*, 2026 WL 548504 at *7.

[15] 8 Del. C. § 144(b)(1)–(2).

[16] *Id.* § 144(e)(2).

[17] See Press Release, Bryan Townsend et al., *Bipartisan Legislation Filed to Promote Clarity and Balance in Delaware's Corporate Laws* (Feb. 17, 2025), <https://senatedems.delaware.gov/2025/02/17/bipartisan-legislation-filed-to-promote-clarity-and-balance-in-delawares-corporate-laws/>.