

## Legislation Proposed to Amend the Delaware General Corporation Law



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On February 17, 2025, a bipartisan coalition of Delaware lawmakers and the Governor proposed legislation that would, if enacted, address issues raised by recent Delaware judicial opinions and reincorporations by high-profile corporations to jurisdictions other than Delaware. [Senate Bill 21](#) would amend the Delaware General Corporation Law (DGCL) to clarify the legal protections directors, officers and controlling stockholders may obtain for a transaction that is approved by unconflicted directors or unconflicted stockholders. The legislation also provides definitions for whether a director may be considered conflicted and whether a stockholder may be considered a controller. Finally, SB21 would require that a stockholder's right to inspect a corporation's books and records be focused on core corporate documents.

If enacted, the legislation would, among other things:

### Conflicted Transactions

- Provide safe harbor procedures for transactions in which directors or officers or controlling stockholders have interests or relationships that might render them interested or not independent with respect to a transaction.
- Under revised Section 144(a), certain acts or transactions involving directors or officers will be protected if approved or ratified by a majority of the disinterested directors or by a majority of the votes cast by the disinterested stockholders entitled to vote thereon, in each case upon disclosure or in full knowledge of the material facts giving rise to the conflict or potential conflict.
- Under new Section 144(b), a controlling stockholder transaction that does not constitute a "going private transaction" may be entitled to the statutory safe harbor protection if it is approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors or approved or ratified by a majority of the votes cast by the disinterested stockholders.
- Under new Section 144(c), a controlling stockholder transaction that constitutes a "going private transaction" may be entitled to the statutory safe harbor protection if it is negotiated and approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors and approved or ratified by a vote of a majority of the votes cast by the disinterested stockholders entitled to vote thereon.
- Define what constitutes a controlling stockholder.
- Under new Section 144(e), a controlling stockholder must own or control a majority in voting power of the stock of the corporation or have the "power functionally equivalent" to a stockholder that owns or controls a majority in voting power of the stock of the corporation by virtue of ownership or control of at least 33% in voting power of the stock of the corporation and

power to exercise managerial authority over the business and affairs of the corporation.

- Provide that an independent board committee need only be comprised of a majority of independent directors (but cannot include the controlling stockholder) rather than fully independent.
- Not require that the use of an independent board committee or a majority of the minority stockholder vote be required as a condition to the transaction “ab initio” at the onset of negotiation of the transaction, as required under Delaware’s MFW line of cases.
- Provide that controlling stockholders and control groups, in their capacity as such, cannot be liable for monetary damages for breach of the duty of care. The amendments do not displace any safe harbor procedures or other protections available at common law.
- Provide that for publicly-listed companies, a director will be presumed to be a disinterested director if the board of directors shall have determined that such director is an independent director or satisfies the relevant criteria for independence under the applicable stock exchange.

### **Inspection Rights**

- Define the materials that a stockholder may demand to inspect pursuant to a request for books and records of the corporation under Section 220 of the DGCL, which materials are limited to: organizational documents, minutes, stockholder communications, materials provided to the board and board committees and annual financial statements. The amendments also set forth certain conditions that a stockholder must satisfy in order to make an inspection of books and records.

### **Timing**

The proposed legislation must be considered by the Delaware Legislature as a whole, and, if passed, signed into law by the Governor before the changes come into effect.