

Esbrook P.C. Law Update: Delaware Enacts Landmark Amendments to the Delaware General Corporation Law

On March 25, 2025, Delaware's Governor signed into law Senate Bill 21, which enacts long-debated amendments to two major provisions of the Delaware General Corporation Law ("DGCL"): Sections 144 and 220. Backed by **bipartisan** support and major corporate stakeholders, these amendments reinforce Delaware's reputation as the nation's premier forum for business-friendly corporate governance. Notably, the changes apply retroactively unless the matter involves a Section 220 demand made on or before February 17, 2025, or an action concerning the relevant transaction was already pending.

Section 144: More Clarity on Conflicted Transactions and Safe Harbors

A central feature of SB 21 is the overhaul of Section 144, which clarifies how boards should approach transactions involving potential conflicts of interest with directors, officers, or controlling stockholders.

One of the most notable updates is the refined definition of a "controlling stockholder." This status now only applies to individuals or entities that (i) hold a majority of voting power, (ii) control director elections through majority voting authority, or (iii) possess at least one-third of the voting power combined with managerial control. In addition, the law now reinforces the presumption of director independence when boards rely on stock exchange standards in making those assessments.

By offering clearer safe harbors and definitions, the amendment gives boards and deal teams more certainty when structuring transactions—while also reducing unnecessary litigation by narrowing the grounds for second guessing board decisions.

Section 220: Narrowed Scope of Books-and-Records Demands

The changes to Section 220 significantly narrow the scope of stockholder inspection rights. The amendments address the scope of books and records available for inspection, including limiting stockholder access to three years. Further, the amendments codify corporate protections by defining what exactly "books and records" mean. Now it is codified to include board meeting minutes, presentations, director independence questionnaires, minutes of stockholder meetings, and correspondence with stockholders.

These changes directly respond to the increase in books and records litigation in the Delaware Court of Chancery that have imposed significant financial burdens on corporations.

Why Delaware Still Leads the Way

These amendments underscore Delaware's continued leadership in corporate law—offering clarity, predictability, and responsiveness to evolving market needs. Delaware remains the preferred jurisdiction for corporations, thanks to its extensive case law, expert judiciary, and strong support for freedom of contract.

Final Thoughts from Esbrook P.C.

We view these amendments as an important development in corporate governance. By reducing legal uncertainty and offering more concrete guidance, the updates strengthen Delaware's appeal as a leading venue for sophisticated business transactions. Esbrook P.C. will continue to monitor developments and advise clients on how these changes may affect governance structures, transactions, stockholders' agreements and litigation strategies.

If you have any questions about how these changes may affect you or your business, please do not hesitate to reach out to Christopher Esbrook (christopher.esbrook@esbrook.com); Scott Leonhardt (scott.leonhardt@esbrook.com); Jared Green (jared.green@esbrook.com); or Katherine Welch (katherine.welch@esbrook.com).