



2025 Amendments to the Delaware General Corporation Law: What Business Owners Need to Know

Business owners operating under the laws of the state of Delaware should familiarize themselves with recently enacted amendments to the Delaware General Corporation Law (“DGCL”). Delaware has long been a hub for business with business-friendly principles, specialized judges and supportive case law. The recent amendments to the DGCL reaffirms Delaware’s commitment to remaining business friendly.

I. Amendments to the DGCL

Below is a summary of the key amendments that went into effect on March 25, 2025:

1. Limitation on the Scope of “Controlling Stockholder” Liability (§144(e)(1)-(2))

Recent court decisions out of Delaware had suggested that minority investors could be deemed “controlling stockholders” and subjected to fiduciary liability typically associated with controlling stockholders. The 2025 amendments clarify and narrow this doctrine, as follows:

- In most instances, a stockholder (or group) holding *less than one-third* of the voting power cannot be deemed a controlling stockholder; and
- Except for going-private or squeeze-out transactions,[1] a transaction involving a controlling stockholder will not be subject to judicial scrutiny if it was approved by either: (a) a committee of disinterested directors or (b) the “informed, uncoerced affirmative vote” of a majority of the votes cast by the disinterested stockholders.

2. Exculpation of Controllers - Duty of Care Claims (§144(d)(5))

The 2025 amendments exculpate a controlling stockholder or control group for monetary damages for breaches of the duty of care. At present, directors and officers may be exculpated for such claims if a specific provision exists in the corporation’s charter. This amendment extends that protection to controlling stockholders and control groups, with no charter amendment and/or reference required.

3. Narrowing of Access to Corporate Books and Records (§220)

Prior to the 2025 amendments, the DGCL did not define what constituted the books and records of a Delaware corporation.

[1] A “squeeze-out” transaction refers to a situation where a controlling stockholder or related party buys out the remaining minority shareholders of a company, often as part of a going-private transaction.

The recent amendment to §220 of the DGCL circumscribes what constitutes the books and records of a corporation and significantly limits the scope of stockholder inspection rights, as follows:

- By default, stockholders may access only “core documents,” such as the charter, bylaws, stockholder agreements, minutes of meetings and annual financials.
- The Court of Chancery *may* order the corporation to produce records beyond this definition, such as internal e-mails, *only if* and to the extent that, among other requirements, the stockholder demonstrated by *clear and convincing evidence* that the specific records are necessary and essential to further the stockholder’s identified purpose.

This amendment aims to address the growing volume and cost of books-and-records demands and derivative litigation in recent years and makes clear that access to more sensitive corporation records can only be reached under compelling circumstances.

4. Strengthening the Presumption Regarding Disinterested Directors for Directors of Public Companies (§144(d)(1))

By law, an “interested director” is a corporate director who has a personal interest in a transaction involving the corporation. A director is deemed “disinterested” from a particular transaction and can therefore participate in discussions and voting on the matter if the director has neither a “material interest” in the transaction nor a “material relationship” with a person that has a material interest in the transaction.

Pursuant to Section 144(a) of the DGCL, a transaction involving or between a corporation, on the one hand, and one or more of the corporation’s directors or officers, on the other hand, may not be the subject of equitable relief, or give rise to an award of damages against a director or officer of the corporation because of the receipt of any benefit by any such director or officer, if: (1) the material facts as to the director or officer’s relationship or interest and as to the act or transaction are disclosed or are known to all members of the board of directors or a committee of the board of directors, and the board or committee in good faith and without gross negligence authorizes the act or transaction by the affirmative votes of a majority of the disinterested directors then serving; (2) the act or transaction is approved or ratified by an informed, uncoerced, affirmative vote of a majority of the votes cast by the disinterested stockholders; or (3) the act or transaction is fair as to the corporation and the corporation’s stockholders.

In determining which directors are disinterested and can therefore vote to authorize the transaction (category 1 in the immediately preceding paragraph), in instances only where the director is not a party to the transaction, the 2025 amendments allow for a statutory presumption of director disinterestedness *if* the following criteria are met: (a) the corporation is listed on a national securities exchange, and (b) the corporation’s board of directors has “determined that such director satisfies the applicable criteria for determining director independence . . . under the rules (and interpretations thereof) promulgated by such exchange.” This presumption may be rebutted only with *substantial and particularized facts* showing a *material* conflict of interest.

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II. Application to Transactions and Disputes

The amendments became effective upon Delaware Governor Matt Meyer's signature on March 25, 2025. As for retroactivity, the amendments apply to all acts or transactions whether occurring before, on, or after enactment, except to the extent that such actions, proceedings, or any demand to inspect books or records commenced or made on or before February 17, 2025 (the date that the first draft of the amendments became publicly available).

If you would like to discuss how these changes impact your business, corporate documents or your corporation's legal matters, please contact:

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