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Delaware Passes Senate Bill 21, Altering the Balance Between Shareholders and Corporations

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On Tuesday evening, following two hours of debate and five failed amendments, bipartisan Senate Bill 21 ("SB 21") passed the Delaware House and was quickly signed by Delaware Governor Matt Meyer. SB 21, which, in part, was a response to the perception that Delaware's Court of Chancery and Supreme Court, lacked predictability and had appeared to favor stockholder class and class attorney claims.

SB 21 amends and clarifies the standards for approval of conflicted deals by independent directors and committees, providing a process for boards to invoke safe harbor procedures and lower thresholds for controlling stockholders engaged in conflicted transactions. In setting clearer rules for transactions with potential or actual conflicts, SB 21 has the potential benefit of granting greater protection to good-faith actors by making it more difficult to being sued or obtaining a dismissal early in litigation. According to the governor's office, these provisions were "a key request from business leaders." Other provisions amend § 220 of the Delaware General Corporation Law to set forth specific materials that stockholders can demand access. In sum, SB 21 is viewed as a rebalancing between the corporation and its shareholders—presenting more difficulty for investors to litigate against the corporations.

Over the last few months, supporters of the legislation, including Governor Meyer, cited the possibility that large companies like Tesla, Meta, Dropbox, Tripadvisor, and Bill Ackman's Pershing Square Capital would recharter outside of Delaware. "Delaware is the best place in the world to incorporate your business, and Senate Bill 21 will help keep it that way, ensuring clarity and predictability, balancing the interests of stockholders and corporate boards," said Governor Meyer, further noting that the passage of SB 21 "will also protect state revenue that will fund education, affordable housing, and infrastructure improvements across [Delaware]."

Delaware accounted for approximately 81% of initial public offerings in the U.S. last year. According to the governor's office, nearly $2.2 billion of the state's budget annually is derived from corporate franchise taxes.

Opponents of the bill, including shareholder attorneys and pension fund managers, cited concerns that SB 21 might prompt shareholders to request companies to leave Delaware, opting for states that have corporate laws aimed at better protecting their investments. However, both supporters and opponents alike agreed during Tuesday's debate that preventing a corporate exodus is a primary concern.

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