

Insights: Delaware Alert

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Delaware Supreme Court Upholds Constitutionality of SB21 Provisions Providing Safe Harbors for Controlling Stockholder Transactions

Executive Summary

- **What’s new:** The Delaware Supreme Court upheld the constitutionality of amendments to the DGCL under SB21, which provide procedural safe harbors for transactions involving controlling stockholders.
- **Why it matters:** The decision shields directors, officers and controlling stockholders from equitable relief and damages if safe harbor provisions are met.
- **What to do next:** Companies should ensure that transactions with controlling stockholders are approved by an informed committee of disinterested directors and/or disinterested minority stockholders to benefit from the safe harbor protections.

Court Decision

On February 27, 2026, in *Rutledge v. Clearway Energy Group LLC*, the Delaware Supreme Court upheld the constitutionality of significant amendments to the Delaware General Corporation Law (DGCL) designed to, among other things, provide procedural safe harbors for transactions involving controlling stockholders. Simply put, amended Section 144 of the DGCL has withstood its constitutional challenge and is now indisputably the law of Delaware.

Safe Harbor Provisions

Under Senate Bill 21 (SB21), which (among other things) amended Section 144 of the DGCL, breach of fiduciary duty claims against directors, officers and controlling stockholders (as defined in the statute) challenging a corporate transaction involving the controller will be shielded from equitable relief (such as an injunction) and damages if one of the following “Safe Harbor Provisions” apply:

- The transaction is approved or recommended in good faith by an informed majority of directors on a committee with at least two disinterested directors; *or*
- The transaction is approved by a majority of fully informed and disinterested minority stockholders.

The one exception is “going private transactions” (as defined in the statute), which require both Safe Harbor Provisions to be satisfied.

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Case Background

After SB21 was signed into law in March 2025, the plaintiff in this case, a stockholder of Clearway Energy, Inc., brought a derivative action against its majority stockholder, Clearway Energy Group LLC, and the company's former CEO. The plaintiff alleged that the defendants breached their fiduciary duties by causing Clearway Energy Inc. to overpay its majority stockholder for an asset related to a wind project in Idaho, resulting in an unfair price that harmed minority stockholders. In connection with his claims, the plaintiff sought a judgment declaring portions of SB21 unconstitutional, arguing that the amendments improperly divested the Court of Chancery of its equitable jurisdiction and retroactively eliminated accrued causes of action. The Court of Chancery certified these two constitutional questions to the Delaware Supreme Court.

The Court's Conclusions and Analysis

The Supreme Court answered both questions in the negative and upheld the constitutionality of the amendments to Section 144.

First, the Supreme Court held that amended Section 144 did not divest the Court of Chancery of jurisdiction over equitable claims. The plaintiff's claims remain with the Court of Chancery.

The amendments merely changed the review framework and eliminated the identified forms of relief when the transaction in question satisfies the required "cleansing mechanisms."

Second, the Supreme Court held that the retroactive application of amended Section 144 did not impermissibly deprive the plaintiff of a vested property right in his claim. The Supreme Court stated that the legislature is entitled to declare statutes and statutory amendments retroactive as long as any deprivation of a property right comports with due process. Here, the Supreme Court found it "highly questionable" that the plaintiff was deprived of a property right because he may still pursue his claims, and the plaintiff's interest in his "anticipated continuance of the existing law" was not a vested property right. Nevertheless, even if the plaintiff had been deprived of a vested property right, the Supreme Court found that due process had been satisfied.

For a more detailed explanation of the amendments to the DGCL under SB21, which involve amendments to both Section 144 and Section 220, see our [April 2025 alert](#).

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