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COMMENTARY

A Bid to Stay on Top: Delaware's Reworking of Corporate Law

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After its passage in the Delaware House of Representatives 32-7¹, Delaware Governor Matt Meyer signed major changes to Delaware's corporate laws into law on March 25th, 2025.² The governor advocated these changes, with proponents stating that the changes are necessary to "give corporations' most powerful managers more predictability and consistency as they consider business transactions. The desire to rework Delaware's corporate law has largely emerged out of fears of an exodus of corporations out of Delaware, sparked by Elon Musk moving Tesla and SpaceX out of Delaware following a ruling by the state's Chancery Court that revoked a \$56 billion pay package for Musk from Tesla, as well as discussions of "Meta, Dropbox and Pershing Square Capital Management...re-incorporating elsewhere."³

Regarding discussions of businesses re-incorporating elsewhere, businesses have engaged in such discussions in response to what they describe as an "increased litigious environment in Delaware."⁴ A combination of this sentiment, controversial decisions from the Delaware Court of Chancery, and efforts of other States, such as Texas, to foster a more corporate-friendly environment ignited concern over whether Delaware would maintain its status as the leading jurisdiction for corporate law."⁵

In the build-up to its passage and signing into law, the bill seeking to rework Delaware corporate law proved controversial.⁶ Opponents of the bill argued that it "would water down retain

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¹ Sarah Mueller, *Delaware Gov. Meyer Signs Corporate Law Overhaul Legislation Over Fears of a 'DExit' of Franchise Dollars*, WHY (Mar. 26, 2025), <https://why.org/articles/delaware-corporate-law-overhaul-signed/>.

² Xerxes Wilson, *Controversial Corporate Law Changes Passed by House, Signed by Delaware Governor*, DEL. ONLINE (Mar. 25, 2025), <https://www.delawareonline.com/story/news/2025/03/25/delaware-corporate-law-changes-chancery-court-signed-into-law-by-governor-matt-meyer/82655315007/>.

³ Mueller, *supra* note 1.

⁴ Eugene Choi & John Stigi III, *Delaware Enacts Sweeping Changes to the Delaware General Corporation Law*, JD SUPRA (Apr. 2, 2025), <https://www.jdsupra.com/legalnews/delaware-enacts-sweeping-changes-to-the-3289322/>.

⁵ *Id.*

⁶ Kate Tabeling, *Controversial Corporate Law Progresses to House*, DEL. BUS. TIMES (Mar. 19, 2025), <https://delawarebusinesstimes.com/news/controversial-corporate-bill-progresses/>.

stockholders and pensioners' rights and the recourse they have to challenge boards of directors for not acting in their best interests."⁷ Furthermore, opponents argue that the bill is "a giveaway to billionaires"⁸ which "allows founders or powerful executives to strike deals at the expense of minority stakeholders."⁹ However, despite these claims, proponents, such as Governor Meyer, state that the reworking of Delaware's corporate law was necessary to restore "clarity, predictability and fairness."¹⁰

The bill, now signed into law, alters the definition of a controlling shareholder, with the law defining controlling shareholders as "individuals who own at least half of a company's shares or a third of shares plus a managerial role."¹¹ Furthermore, the law "lowers the amount of internal company scrutiny required to examine deals made by powerful shareholders with their companies,"¹² and restricts "books and records" claims which request a shareholder can make to executives for internal company documents."¹³

The passage of this bill reworking corporate law is certainly significant. At this time, its impact on Delaware's status as "the leading jurisdiction for corporate law"¹⁴ is unclear, given the recency of its passage and signing into law. While some argue that the changes are necessary to maintain Delaware's leading position in corporate law, others argue that the bill benefits "influential business leaders...at the expense of pensioners, retirees and ordinary investors" which will have a negative impact on Delaware's place as the preferable jurisdiction for incorporation.¹⁵ Ultimately, given the changes, the law seems likely to limit Delaware judges' ability to deal with matters involving conflicts of interest, along with limiting the powers of minority shareholders.¹⁶ Thus, the changes appear to capitulate to influential business leaders who had begun to question Delaware as a place of incorporation by making Delaware a jurisdiction more friendly to corporate leadership.

⁷ *Id.*

⁸ Tom Hals, *Delaware Corporate Law Overhaul Heads to Final Vote Amid Criticism it Favors Billionaires*, REUTERS (Mar. 20, 2025), <https://www.reuters.com/world/us/delaware-lawmakers-vote-corporate-law-overhaul-face-criticism-2025-03-20/>.

⁹ Mueller, *supra* note 1.

¹⁰ Lora Kolodny, *After Elon Musk's Delaware Exit, State Lawmakers Weigh Bill to Overhaul Corporate Law*, CNBC (Mar. 15, 2025), <https://www.cnbc.com/2025/03/15/after-elon-musk-delaware-exit-state-weighs-overhaul-of-corporate-law.html>.

¹¹ Karl Baker, *Controversial Corporate Law Bill Passes Senate*, SPOTLIGHT DEL. (Mar. 13, 2025), <https://spotlightdelaware.org/2025/03/13/sb-21-corporate-law-senate-vote/>.

¹² *Id.*

¹³ *Id.*

¹⁴ Choi & Stigi III, *supra* note 4.

¹⁵ Wilson, *supra* note 2.

¹⁶ Sujeet Indap, *Delaware Set to Soften Governance Laws on Threat of Corporate Exodus*, FIN. TIMES (Mar. 25, 2025), <https://www.ft.com/content/29ae4126-7263-47e7-bd2e-c79ad41d930d>.