

Updates

April 03, 2025

Delaware Significantly Narrows Scope of Stockholder Inspection of Corporate Books and Records



Delaware Governor Matt Meyer signed into law substantive amendments to Section 220 of the Delaware General Corporation Law (Section 220), the statute that allows stockholders of corporations organized under Delaware law to inspect the corporation's books and records, on March 25, 2025.

These statutory inspection rights are regularly used by a sophisticated stockholder's plaintiffs' bar to obtain evidence that they can use to pursue lawsuits against the corporation's directors and officers for alleged breaches of fiduciary duty in connection with corporate decision-making. The recent amendments, which were effective upon signature by the governor, narrow the scope of inspection that is permitted under Section 220, potentially making it more difficult for stockholder plaintiffs to plead viable claims against directors and officers of Delaware corporations.

The amendments to Section 220 and other Delaware corporate governance statutes were contained in Delaware Senate Bill 21, which was a response to the actual and threatened reincorporation of Delaware corporations in other states, such as Texas and Nevada, which claim to offer more corporation-friendly laws. The press release issued by the governor's office to announce that he had signed Senate Bill 21 stated that Delaware is the corporate home to 2.2 million registered entities whose franchise fees represent "more than one-third of the Delaware state budget at roughly \$2.2 billion" and that the amendments contained in Senate Bill 21 were "aimed at ensuring the state remains the premier home for U.S. and global businesses [by clarifying] key governance structures to reinforce Delaware's reputation for equitable, predictable, and efficient corporate oversight."

Purpose and Role of Section 220

Section 220 allows stockholders of Delaware corporations who have a "proper purpose" to inspect and copy relevant corporate books and records. It has long been recognized that a "proper purpose" includes the investigation of potential corporate mismanagement.

Delaware courts have encouraged stockholders to use Section 220 to obtain necessary evidence before filing substantive lawsuits against the corporation and/or its directors and officers. *See, e.g., Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 120 (Del. 2006). Complaints filed by stockholders who had not taken this step before filing often were viewed with skepticism by Delaware judges and were more likely to be dismissed.

Prior to the recent amendments, Section 220 identified two narrow categories of documents—the corporation's stock ledger and its list of stockholders—and one broad, catch-all category—"other books and records"—that were subject to inspection. Stockholders regularly relied on this third catch-all category when making pre-litigation inspection demands.

Although the original expectation was that inspection requests under Section 220 would be limited to core board-level documents, such as minutes and resolutions of the board of directors and its committees, Delaware courts have long recognized that Section 220 also granted stockholders the right to inspect additional corporate "papers," such as letters and memoranda among officers and directors. *See, e.g., Nodana Petroleum Corp. v. State ex rel. Brennan*, 123 A.2d 243, 246-47 (Del. 1956). Such decisions were consistent with the belief that "a stockholder with a proper purpose 'should be given access to all of the documents in the corporation's possession, custody or control, that are necessary to satisfy that proper purpose.'" *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 752 (Del. 2019) (quoting *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 114-15 (Del. 2002)). Similarly, the Delaware courts permitted stockholders to inspect emails and other electronic communications among relevant personnel if core board-level documents and other "non-email books and records" were insufficient to accomplish the stockholder's proper purpose. *KT4 Partners*, 203 A.3d at 752-53.

The 2025 Amendments

This year's amendments to Section 220 narrow the scope of permissible inspection. Most significant, the term "books and records" is now statutorily defined and, therefore, more limited than the undefined term in the prior version of the statute. The specified "books and records" subject to inspection under amended Section 220 are:

- The corporation's certificate of incorporation and current bylaws, including any documents incorporated therein by reference
- Minutes of stockholder meetings and signed stockholder consents, limited to the three years preceding the date of the stockholder demand
- All written or electronically transmitted communications to stockholders generally within the three years preceding the stockholder demand
- Minutes of meetings of, and records of actions by, the board of directors and its committees
- Materials provided to the board of directors or its committees in connection with actions taken by the board or such committees
- The corporation's annual financial statements for the three years preceding the stockholder demand
- Any agreement with a current or prospective stockholder entered under Section 122(18) of the Delaware General Corporation Law
- Director and officer independence questionnaires

Likewise, if a stockholder moves to compel inspection under Section 220, the Delaware Court of Chancery may order inspection only of the categories of documents set forth above, with two limited exceptions. First, if the corporation does not maintain certain categories of documents identified in the statute, such as minutes of stockholder meetings or the preceding three years' annual financial statements, the Court of Chancery may order the corporation to produce their "functional equivalent." Second, the Court of Chancery may order inspection of other specific records only if the demand satisfies various procedural requirements, including (1) that the demand is made in good faith for a recognized "proper purpose" and describes the records sought with

“reasonable particularity,” (2) that the requested books and records are “specifically related” to the stockholder’s proper purpose, and (3) that the stockholder has demonstrated “by clear and convincing evidence that such specific records are necessary and essential to further such purpose.”

The amendments also specify that the corporation (or the Court of Chancery) may impose reasonable restrictions on the confidentiality, use, or distribution of books and records made available to the demanding stockholder and may require that the demanding stockholder agree that any information in the books and records provided for inspection will be incorporated by reference into any complaint filed on behalf of the stockholder related to the subject matter of the inspection demand. The corporation may also redact portions of any books and records produced that are not specifically related to the stockholder’s purpose.

Anticipated Impact of 2025 Amendments

The amendments to Section 220 are likely to make it more difficult for stockholders to obtain evidence to support viable fiduciary duty and other corporate governance claims. This is especially true with respect to documents reflecting communications among directors or officers that take place outside of board meetings—including emails, texts, and other electronic communications—which are frequently a more fertile source of information that will support viable claims than most of the categories that the amended statute explicitly makes subject to stockholder inspection rights. While the amendments do not eliminate the potential for a stockholder to obtain email or other electronic communications via a Section 220 demand, they increase the burden on stockholders who seek to obtain such documents.

While the amended statute may make it more difficult for stockholders to plead corporate governance claims with the same level of detail as they might have in the past, it is unlikely that these amendments will cause Delaware courts to relax their scrutiny of those allegations. This is because the amendments do not alter the pleading standards applicable to a motion to dismiss a derivative action or other claim for breach of fiduciary duties. Moreover, any judicial relaxation of the standard of review would be inconsistent with the motivations underlying Senate Bill 21—namely, to reduce the incentive for Delaware corporations to seek to recharter in another state deemed to be more corporation-friendly.

Key Takeaways

1. The 2025 amendments left intact subsection 220(c), which gives the corporation five business days to respond to a stockholder inspection demand. Failure to respond to the demand within that time allows the stockholder to file a motion in the Court of Chancery to compel inspection. Therefore, a corporation receiving an inspection demand should consult promptly with counsel to ensure a timely response that avoids a motion to compel.
2. Prompt consultation with counsel is also important to ensure that the corporation’s response is tailored to the scope of permissible inspection after the amendments to Section 220.
3. Continue to practice good document hygiene and minuting practices given the potential increased focus on board and committee minutes and other specified categories of documents permissible for inspection after the amendments.
4. Corporations not chartered in Delaware should not ignore these amendments. Unlike Delaware, many states do not have a well-developed body of law related to corporate inspection demands. Such states often turn to Delaware law for guidance on corporate governance issues. The amendments to Section 220 also bring the scope of permissible inspection more in line with the inspection statutes of other states. Where that is the case, Delaware law interpreting the amended Section 220 may be relevant to analyzing the proper scope of stockholder inspection in states other than Delaware.

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