

Delaware Amends Section 220 – Will Scope of ‘Books and Records’ Production Be Limited?

March 27, 2025

On March 25, 2025, the Delaware Legislature enacted Senate Bill 21, significantly amending the Delaware General Corporation Law. Among its notable changes is an effort to narrow document production under Section 220, which governs stockholders’ access to corporate books and records – though questions remain whether a “compelling need” exception will ultimately swallow the rule.

The new law also seeks to provide greater certainty and predictability regarding conflicted transactions, as explained in detail in this Cooley M&A post, [“Delaware Enacts Amendments to Provide Safe Harbors for Conflicted Transactions.”](#)

Recent case law expands scope of Section 220 productions

Section 220 provides certain stockholders a qualified right to inspect corporate books and records, often serving as a precursor to derivative or class action lawsuits. Historically limited to “formal” documents like board minutes and materials, Delaware courts steadily expanded Section 220’s scope, granting access to emails, texts and other informal documents – even those going back many years. At the same time, Delaware courts lowered the threshold for demonstrating a “proper purpose” for inspection, requiring stockholders investigating possible wrongdoing merely to show a “credible basis” to suspect possible wrongdoing. Unsurprisingly, these developments fueled a proliferation of burdensome books and records demands on Delaware corporations.

Revamped Section 220 narrows scope of ‘books and records’

Amended Section 220 reduces the burdens associated with responding to books and records demands in several notable ways.

Purpose

Under amended Section 220, a stockholder’s demand must be made in good faith and for a proper purpose. It must describe the purpose and the records sought “with reasonable particularity.” And the records sought must be “specifically related to the stockholder’s purpose.”

Scope

Previously undefined, the term “books and records” is now expressly limited to enumerated categories, some subject to a three-year limitation period from the demand date. The defined categories include:

1. Certificate of incorporation (including agreements and instruments incorporated by reference).
2. Bylaws (including agreements and instruments incorporated by reference).
3. Minutes of stockholder meetings and signed consents documenting all actions taken by stockholders without a meeting (**past three years**).
4. Written and electronic communications by the corporation to stockholders generally (**past three years**).
5. Minutes of board and committee meetings and records of any actions taken by them.
6. Materials provided to the board or committee in connection with actions taken by them.
7. Annual financial statements of the corporation (**past three years**).
8. Agreement entered into under [DGCL § 122\(18\)](#).
9. Director and officer independence questionnaires.

Amended Section 220 forbids courts from ordering corporations to produce records outside of these categories, subject to two exceptions.

First, if specific formal records (like minutes or annual financial statements) are unavailable, the court may order

production of their “functional equivalent” – but “only to the extent necessary and essential to fulfill the stockholder’s proper purpose.”

Second – and potentially more significant – the court may order production of “other specific records” if the stockholder demonstrates all of the following:

- i. Compliance with Section 220(b).
- ii. A “compelling need” for such records.
- iii. “clear and convincing evidence” that these records are “necessary and essential to further such purpose.”

Notably, this exception was not in the original draft of Senate Bill 21; it was added at the suggestion of the Delaware State Bar Association’s Corporation Law Section. It remains to be seen how broadly courts will interpret “compelling need” and “clear and convincing evidence,” leaving open the possibility that this exception could substantially weaken the statute’s intended limitations on the scope of production.

Confidentiality and use

Amended Section 220 codifies existing practices regarding confidentiality and use of produced materials. Corporations may “impose reasonable restrictions on the confidentiality, use, or distribution of books and records,” including designating all produced documents as incorporated by reference into any subsequent complaint by the stockholder, allowing defendants to rely on them in motions to dismiss that complaint. Corporations also may redact nonrelevant information (i.e., information “not specifically related to the stockholder’s purpose”) in their Section 220 productions.

Timing

The amendments apply retroactively to all Section 220 demands made after February 17, 2025 – the day Senate Bill 21 was introduced.

Key takeaways

- Future disputes over Section 220 demands will often turn on whether the stockholder’s purpose is stated with “reasonable particularity,” and whether a “compelling need” exists for documents beyond the statute’s enumerated categories.
- Depending on how courts interpret the “reasonable particularity” and “compelling need” standards, stockholders’ access to emails and texts may be significantly curtailed, potentially limited to scenarios where formal corporate records are unavailable or demonstrably insufficient.
- As a result, corporations should carefully observe corporate formalities and maintain comprehensive, accurate records – including meeting minutes, resolutions, financial statements and director questionnaires – to mitigate exposure to expansive Section 220 demands.

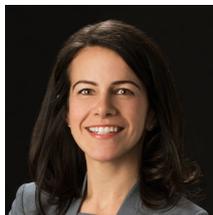
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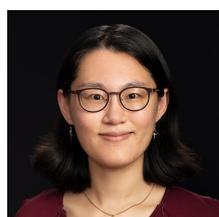
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