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DELAWARE STATE SENATE  
153rd GENERAL ASSEMBLY

SENATE BILL

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1           Section 1. Amend § 144, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions  
2 as shown by underline as follows:

3           § 144. Interested directors and officers; controlling stockholder transactions; quorum.

4           (a) Except for a controlling stockholder transaction addressed in subsection (b) or (c) of this section or an act or  
5 transaction that involves a sale, breakup or change in control of the corporation or that otherwise gives rise to appraisal rights  
6 under 8 Del. C. § 262, an act or transaction involving or between a corporation or 1 or more of its subsidiaries, on the one  
7 hand, and 1 or more of its directors or officers, on the other hand, or involving or between a corporation or 1 or more of its  
8 subsidiaries, on the one hand, and any other corporation, partnership (general or limited), limited liability company, statutory  
9 trust, association, or any other entity or organization in which 1 or more of its directors or officers are directors, stockholders,  
10 partners, managers, members, or officers, or have a financial interest, on the other hand, may not ~~be the subject of equitable~~  
11 ~~relief, or~~ give rise to an award of damages, against a director or officer of the corporation, because of the foregoing  
12 circumstances or the receipt of any benefit by any such director, officer, entity or organization or because the director or  
13 officer is present at or participates in the meeting of the board or committee which authorizes the act or transaction or was  
14 involved in the initiation, negotiation, or approval of the act or transaction (including by virtue of a director's vote being  
15 counted for such purpose), if:

16           (1) The material facts as to the director's or officer's relationship or interest and as to the act or transaction,  
17 including any involvement in the initiation, negotiation, or approval of the act or transaction, are disclosed or are known  
18 to all members of the board of directors or a committee thereof, and the board or committee, uncoerced, in good faith  
19 and without gross negligence authorizes the act or transaction by the affirmative votes of a majority of the disinterested  
20 directors then serving on the board or such committee (as applicable), even though the disinterested directors be less than  
21 a quorum; provided that if a majority of the directors are not disinterested directors with respect to the act or transaction,

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22 such act or transaction shall be approved (or recommended for approval) by a committee of the board of directors that  
23 consists of 2 or more directors, each of whom ~~the board of directors has determined to be~~ is a disinterested director with  
24 respect to the act or transaction; or

25 (2) The act or transaction is approved or ratified by an informed, uncoerced, affirmative vote of a majority of  
26 the votes cast by the disinterested stockholders; or

27 (3) The act or transaction is fair as to the corporation and its stockholders.

28 (b) A controlling stockholder transaction (other than any going private transaction or extraordinary transaction) may  
29 not ~~be the subject of equitable relief, or~~ give rise to an award of damages, against a director or officer of the corporation or  
30 any controlling stockholder or member of a control group, by reason of a claim based upon a breach of fiduciary duty by a  
31 director, officer, controlling stockholder, or member of a control group, if:

32 (1) The material facts as to such controlling stockholder transaction (including the controlling stockholder's or  
33 control group's interest therein) are disclosed or are known to all members of a committee of the board of directors to  
34 which the board has expressly delegated the authority to negotiate (~~or oversee the negotiation of~~) and to reject such  
35 controlling stockholder transaction, and such controlling stockholder transaction is approved (or recommended for  
36 approval) in good faith and without gross negligence by an uncoerced majority of the disinterested directors then serving  
37 on the committee; provided that the committee consists of 2 or more directors, each of whom ~~the board of directors has~~  
38 ~~determined to be~~ is a disinterested director with respect to the controlling stockholder transaction; or

39 (2) Such controlling stockholder transaction is conditioned, by its terms, as in effect at the time it is submitted  
40 to stockholders for their approval or ratification, on the approval of or ratification by disinterested stockholders, and such  
41 controlling stockholder transaction is approved or ratified by an informed, uncoerced, affirmative vote of a majority of  
42 the votes cast by the disinterested stockholders; or

43 (3) Such controlling stockholder transaction is fair as to the corporation and its stockholders.

44 (c) A controlling stockholder transaction constituting a going private transaction or extraordinary transaction may  
45 not ~~be the subject of equitable relief, or~~ give rise to an award of damages, against a director or officer of the corporation or  
46 any controlling stockholder or member of a control group by reason of a claim based upon a breach of fiduciary duty by a  
47 director, officer, controlling stockholder, or member of a control group, if:

48 (1) Such controlling stockholder transaction is approved (or recommended for approval) in accordance with  
49 paragraph (b)(1) of this section and approved in accordance with paragraph (b)(2) of this section; or

50 (2) Such controlling stockholder transaction is fair as to the corporation and its stockholders.

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51 (d)(1) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the  
52 board of directors or of a committee which authorizes the act or transaction.

53 (2) Any director of a corporation that has a class of stock listed on a national securities exchange shall be  
54 presumed to be a disinterested director with respect to an act or transaction to which such director is not a party if the  
55 board of directors shall have determined that such director satisfies the applicable criteria for determining director  
56 independence from the corporation and, if applicable with respect to the act or transaction, the controlling stockholder  
57 or control group, under the rules (and interpretations thereof) promulgated by such exchange (treating the applicable  
58 controlling stockholder and control group as if they were the corporation for purposes of applying such criteria to  
59 determine independence from a controlling stockholder or control group), which presumption ~~shall be heightened and~~  
60 may ~~only~~ be rebutted by ~~substantial and~~ particularized facts that such director has a material interest in such act or  
61 transaction or has a material relationship with a person with a material interest in such act or transaction.

62 (3) The designation, nomination or vote in the election of the director to the board of directors by any person  
63 that has a material interest in an act or transaction shall not, ~~of by~~ itself, ~~be evidence establish~~ that a director is not a  
64 disinterested director with respect to an act or transaction to which such director is not a party.

65 (4) No person shall be deemed a controlling stockholder unless such person satisfies the criteria in paragraph  
66 (e)(2) of this section. No 2 or more persons that are not controlling stockholders shall be a control group unless they  
67 satisfy the criteria in paragraph (e)(1) of this section.

68 (5) No person who is a controlling stockholder or member of a control group shall be liable in such capacity to  
69 the corporation or its stockholders for monetary damages for breach of fiduciary duty other than for:

70 a. A breach of the duty of loyalty to the corporation or the other stockholders;

71 b. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of  
72 law; or

73 c. Any transaction from which the person derived an improper personal benefit.

74 (6) Nothing in subsections (a), (b) or (c) of this section shall:

75 a. Limit or eliminate the right of any person to seek ~~equitable~~ relief on the grounds that an act or transaction,  
76 including a controlling stockholder transaction, was not authorized or approved in compliance with the procedures  
77 set forth in this chapter, was not authorized or approved in compliance with the certificate of incorporation or bylaws  
78 of the corporation, or is in violation of any plan, agreement or order of any governmental authority to which the  
79 corporation is a party or subject; or

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80 b. Limit judicial review for purposes of ~~injunctive relief~~ for claims based on ~~of~~ provisions or devices  
81 designed or intended to deter, delay, or preclude a change of control or other transaction involving the corporation  
82 or a change in the composition of the board of directors; or

83 c. Limit or eliminate the right of any person to seek relief on the grounds that a stockholder or other person  
84 knowingly aided and abetted a breach of fiduciary duty by one or more of the directors or officers of the corporation.

85 (7) Shares irrevocably accepted for purchase or exchange pursuant to an offer contemplated by § 251(h) of this title  
86 shall be deemed voted in favor of the act or transaction and shares owned or controlled by disinterested stockholders that  
87 have not been irrevocably accepted for purchase or exchange pursuant to such an offer shall be deemed voted against the act  
88 or transaction for purposes of determining whether the transaction has been approved for purposes of subsections (a)(2),  
89 (b)(2) and (c)(1) of this section.

90 (e) For purposes of this section:

91 (1) “Control group” means 2 or more persons that are not controlling stockholders that, by virtue of an  
92 agreement, arrangement, or understanding between or among such persons, constitute a controlling stockholder.

93 (2) “Controlling stockholder” means any person that, together with such person’s affiliates and associates:

94 a. Owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote  
95 generally in the election of directors or in the election of directors who have a majority in voting power of the votes  
96 of all directors on the board of directors;

97 b. Has the right, by contract or otherwise, to cause the election of nominees who are selected at the  
98 discretion of such person and who constitute either a majority of the members of the board of directors or directors  
99 entitled to cast a majority in voting power of the votes of all directors on the board of directors; or

100 c. Has the power functionally equivalent to that of a stockholder that owns or controls a majority in voting  
101 power of the outstanding stock of the corporation entitled to vote generally in the election of directors by virtue of  
102 ownership or control of at least one-third in voting power of the outstanding stock of the corporation entitled to vote  
103 generally in the election of directors or in the election of directors who have a majority in voting power of the votes  
104 of all directors on the board of directors and power to exercise managerial authority over the business and affairs of  
105 the corporation.

106 (3) “Controlling stockholder transaction” means an act or transaction between the corporation or 1 or more of  
107 its subsidiaries, on the one hand, and a controlling stockholder or a control group, on the other hand, or an act or  
108 transaction from which a controlling stockholder or a control group receives a financial or other benefit not shared with  
109 the corporation’s stockholders generally.

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110 (4) “Disinterested director” means a director who is not a party to the act or transaction and does not have a  
111 material interest in the act or transaction or a material relationship with a person that has a material interest in the act or  
112 transaction.

113 (5) “Disinterested stockholder” means any stockholder that does not have a material interest in the act or  
114 transaction at issue or, if applicable, a material relationship with the controlling stockholder or other member of the  
115 control group, or any other person that has a material interest in the act or transaction.

116 (6) “Extraordinary transaction” means: (i) any “business combination” as defined by 8 Del. C. § 203(c)(3);  
117 (ii) any act or transaction that involves a sale, breakup or change in control of the corporation or that otherwise gives rise  
118 to appraisal rights under 8 Del. C. § 262; (iii) any transaction that requires stockholder approval (whether by vote or  
119 written consent) under any provision of this title, the corporation’s certificate of incorporation or bylaws or any plan or  
120 agreement to which the corporation is a party; (iv) any tender or exchange offer for shares not held by the controlling  
121 stockholder; and (v) any purchase or sale by the corporation in which the consideration, whether in cash or stock, has an  
122 aggregate value in excess of the lesser of: (a) \$100 million or (b) 20% of either the aggregate market value of all the  
123 assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock  
124 of the corporation.

125 (67) “Going private transaction” means:

126 a. For a corporation with a class of equity securities subject to § 12(g) or 15(d) of the Securities Exchange  
127 Act of 1934 or listed on a national securities exchange, a Rule 13e-3 transaction (as defined in 17 CFR § 240.13e-  
128 3(a)(3) or any successor provision) or any other transaction in which all shares of a corporation not held by the  
129 controlling stockholder or control group are cancelled, converted, purchased, acquired or exchanged for  
130 consideration; and

131 b. For any other corporation to which paragraph (e)(6)a. of this section does not apply, any controlling  
132 stockholder transaction, including a merger, recapitalization, share purchase, consolidation, amendment to the  
133 certificate of incorporation, tender or exchange offer, conversion, transfer, domestication or continuance, pursuant  
134 to which all or substantially all of the shares of the corporation’s capital stock held by the disinterested stockholders  
135 (but not those of the controlling stockholder or control group) are cancelled, converted, purchased, exchanged or  
136 otherwise acquired or cease to be outstanding.

137 (78) “Material interest” means an actual or potential benefit, including the avoidance of a detriment, other than  
138 one which would devolve on the corporation or the stockholders generally, that (i) in the case of a director, would  
139 reasonably be expected to impair the objectivity of the director’s judgment when participating in the negotiation,

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140 authorization or approval of the act or transaction at issue and (ii) in the case of a stockholder or any other person (other  
141 than a director), would be material to such stockholder or such other person.

142 (89) “Material relationship” means a familial, fiduciary, financial, professional, employment, or other  
143 relationship that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director’s  
144 judgment when participating in the negotiation, authorization or approval of the act or transaction at issue and (ii) in the  
145 case of a stockholder, would be material to such stockholder.

146 Section 2. Amend § 220, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions  
147 as shown by underline as follows:

148 § 220. Inspection of books and records.

149 (a) As used in this section:

150 (1) “Books and records” means all of the following:

151 a. The certificate of incorporation, as defined in § 104 of this title, including a copy of any agreement or  
152 other instrument incorporated by reference in the certificate of incorporation.

153 b. The bylaws then in effect, including a copy of any agreement or other instrument incorporated by  
154 reference in the bylaws.

155 c. Minutes of all meetings of stockholders and the signed consents evidencing all action taken by  
156 stockholders without a meeting, in each case for the 3 years preceding the date of the demand under subsection (b)  
157 of this section.

158 d. All communications in writing or by electronic transmission to stockholders generally within the past 3  
159 years preceding the date of the demand under subsection (b) of this section.

160 e. Minutes of any meeting of the board of directors or any committee of the board of directors and records  
161 of any action of the board of directors or any such committee.

162 f. Materials provided to the board of directors or any committee of the board of directors in connection with  
163 actions taken by the board of directors or any such committee.

164 g. Annual financial statements of the corporation for the 3 years preceding the date of the demand under  
165 subsection (b) of this section.

166 h. Any agreement entered into under § 122(18) of this title.

167 i. Director and officer independence questionnaires.

168 (2) “Proper purpose” means a purpose reasonably related to a stockholder’s interest as a stockholder.

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169 (3) “Stockholder” means a person who is a holder of record of stock in a stock corporation, or a person who is  
170 the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person.

171 (4) “Subsidiary” means any entity directly or indirectly owned, in whole or in part, by the corporation of which  
172 the stockholder is a stockholder and over the affairs of which the corporation directly or indirectly exercises control, and  
173 includes, without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited  
174 liability companies, statutory trusts and/or joint ventures.

175 (5) “Under oath” includes statements the declarant affirms to be true under penalty of perjury under the laws of  
176 the United States or any state.

177 (b)(1) Subject to paragraph (b)(2) of this section, any stockholder, in person or by attorney or other agent, shall,  
178 upon written demand under oath, have the right during the usual hours for business to inspect for any proper purpose, and to  
179 make copies and extracts from:

180 a. The corporation’s stock ledger, a list of its stockholders, and its other books and records; and

181 b. A subsidiary’s books and records, to the extent that:

182 1. The corporation has actual possession and control of such records of such subsidiary; or

183 2. The corporation could obtain such records through the exercise of control over such subsidiary,  
184 provided that as of the date of the making of the demand:

185 A. The stockholder inspection of such books and records of the subsidiary would not constitute a  
186 breach of an agreement between the corporation or the subsidiary and a person or persons not affiliated  
187 with the corporation; and

188 B. The subsidiary would not have the right under the law applicable to it to deny the corporation  
189 access to such books and records upon demand by the corporation.

190 (2) A stockholder may inspect and copy the corporation’s books and records only if all of the following apply:

191 a. The stockholder’s demand is made in good faith and for a proper purpose.

192 b. The stockholder’s demand describes with reasonable particularity the stockholder’s purpose and the  
193 books and records the stockholder seeks to inspect.

194 c. The books and records sought are specifically related to the stockholder’s purpose.

195 (3) The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of books and  
196 records and may require, as a condition to producing books and records to a stockholder under any demand under this  
197 subsection, that the stockholder agree that any information included in the corporation’s books and records produced to  
198 a stockholder is deemed incorporated by reference in any complaint filed by or at the direction of the stockholder in

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199 relation to the subject matter referenced in the demand. The corporation may redact portions of any books and records  
200 produced to such stockholder under this subsection to the extent the portions so redacted are not specifically related to  
201 the stockholder's purpose.

202 (4) This section does not affect:

203 a. The right of a stockholder to seek discovery of books and records if the stockholder is in litigation with  
204 the corporation, to the same extent as any other litigant; or

205 b. The power of a court, independently of this chapter, to compel the production of corporate records for  
206 inspection and to impose reasonable restrictions as provided in paragraph (b)(3) of this section, provided that, in the  
207 case of production of books and records described in paragraph (a)(1) of this section at the request of a stockholder,  
208 the stockholder has met the requirements of this subsection.

209 (5) In every instance where the stockholder is other than a record holder of stock in a stock corporation, or a  
210 member of a nonstock corporation, the demand under oath shall state the person's status as a stockholder, be accompanied  
211 by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and  
212 correct copy of what it purports to be.

213 (6) In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the  
214 demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or  
215 other agent to so act on behalf of the stockholder.

216 (7) The demand under oath shall be directed to the corporation at its registered office in this State or at its  
217 principal place of business.

218 (d) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, its books  
219 and records, and other corporate records for a purpose reasonably related to the director's position as a director. The Court of  
220 Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought.  
221 The Court may summarily order the corporation to permit the director to inspect the stock ledger, the list of stockholders, the  
222 books and records, and other corporate records and to make copies or extracts therefrom. The burden of proof shall be upon  
223 the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion,  
224 prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court  
225 may deem just and proper.

226 (e) In any proceeding brought by a stockholder under subsection (c) of this section to compel the inspection of book  
227 and records, the Court of Chancery may not order the corporation to produce any records of the corporation other than the



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228 books and records set forth in paragraph (a)(1) of this section, except as otherwise expressly provided in subsection (f) or  
 229 subsection (g) of this section.

230 (f) If the corporation does not have any of the books and records described in paragraphs (a)(1)c., (a)(1)e., or (a)(1)g.  
 231 of this section or, in the case of corporation that has a class of stock listed on a national securities exchange, paragraph (a)(1)i.  
 232 of this section, the Court of Chancery may order the corporation to produce additional records of the corporation constituting  
 233 the functional equivalent of any such books and records in response to a demand for inspection brought by a stockholder  
 234 under subsection (b) of this section only if and to the extent the stockholder has met the requirements of subsection (b) of this  
 235 section, and only to the extent necessary and essential to fulfill the stockholder's proper purpose.

236 (g) In any proceeding brought by a stockholder under subsection (c) of this section to compel the inspection of book  
 237 and records, the Court of Chancery may order the corporation to produce, in addition to any books and records or other  
 238 records ordered to be produced pursuant to subsection (e) of this section, other specific records of the corporation only if and  
 239 to the extent:

240 (1) such stockholder has met the requirements of subsection (b) of this section;

241 (2) such stockholder reasonably identifies the documents the stockholder needs and provides a basis for the court to  
 242 infer that those documents likely exist (see note 4 below)~~such stockholder has made a showing of a compelling need for an~~  
 243 ~~inspection of such records to further the stockholder's proper purpose;~~ and

244 (3) such stockholder has demonstrated by ~~clear and convincing~~ a preponderance of the evidence that such specific  
 245 records are necessary and essential to further such purpose.

246 (h) The Court of Chancery may impose reasonable restrictions as provided in paragraph (b)(3) of this section to any  
 247 records of the corporation produced pursuant to subsection (f) or subsection (g) of this section.

248 Section 3. Sections 1 and 2 of this Act shall take effect on the date the Governor signs this Act (the "Effective  
 249 Date") and shall apply to all acts and transactions (including demands to inspect books and records), ~~whether~~ occurring  
 250 ~~before, on or after such date, \_ except that~~ Sections 1 and 2 of this Act shall not apply to or affect any action or proceeding  
 251 commenced in a court of competent jurisdiction that is completed or pending on or before the Effective Date ~~February 17,~~  
 252 2025.

253

## SYNOPSIS

### NOTES

1. Section 144(a) was modified to ensure that it does not apply to Revlon claims.

2. Going private transaction – The change to the definition was expanded to include stock-for-stock mergers.

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3. Extraordinary transaction – This was expanded to include other extraordinary transactions that present a particularly significant risk of controller exploitation of minority investors. Certain language is taken from 203(c)(3)(ii), which uses a 10% threshold.
4. The language in Section 220(g)(2) is taken directly from Chief Justice Strine’s opinion in *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738 (Del. 2019).