American Investment Council

Statement in Support of Delaware Senate Bill 21

March 7, 2025

Dear Honorable Members of the Delaware General Assembly:

On behalf of the American Investment Council (AIC), I am writing in support of S.B. 21. The bill provides welcome clarity and greater predictability to Delaware law, consistent with Delaware's long tradition of cultivating its corporate law and thoughtfully responding to market and stakeholder concerns.

The AIC is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. Our members are the world's leading private equity and growth capital firms united by their commitment to growing and strengthening the businesses in which they invest. In Delaware, private equity supports 33,000 jobs across 104 private equity backed companies. Since 2020, the private equity industry has invested $13.6 billion in Delaware.

We briefly address why S.B. 21's pragmatic, pro-growth amendments are good for corporate law and good for Delaware. S.B. 21 provides:

- Clearer Standards. S.B. 21 provides clearer definitions of many concepts that are essential for good corporate governance. Definitional clarity allows corporate actors and their counsel to take proactive steps in matters such as director appointments and deal planning with greater predictability and confidence. Corporate law functions better when issues can be addressed *ex ante*, rather than in after-the-fact litigation.
- Streamlined Roadmaps. S.B. 21 provides practical safeharbors to guide transactional planners and incentivize adoption of procedural safeguards. A key criticism of recent common law developments is increased doctrinal complexity and concomitant susceptibility to technical foot faults that do not affect the

economic substance of transactions. S.B. 21 seeks to provide pragmatic roadmaps that can both be understood by businesspersons and executed in the fast-paced world of corporate transactions.

- Pro-Growth Predictability. Predictability is good for business, plain and simple. S.B. 21 helps to ensure that companies and their stakeholders, whether deciding where to incorporate, what directors to select or how to execute a going private transaction, view Delaware as a forum where the rules are clear and the outcomes are predictable.

We urge S.B. 21's adoption. We also believe the General Assembly should make S.B. 21 retroactive in all circumstances not yet subject to a post-trial judgment by the Court of Chancery. Retroactivity is important to ensure that the principles expressed are broadly and consistently adopted. Courts should also have immediate clarity of standards to apply, and market participants are not treated inequitably based solely on the timing a complaint is filed.

The Delaware General Assembly's attention to corporate law issues is a key ingredient in the legal foundation and history that has made Delaware the preeminent forum for incorporation for over a century. Thank you for your sponsorship for S.B. 21 and continued efforts on behalf of all Delawareans. Your thoughtful proposals will help provide needed predictability as a number of our members actively consider their options relating to the incorporation of new and existing companies.

Respectfully,

Will Dunham

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Executive Vice President for Government Affairs

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