



SPONSOR: Sen. Townsend & Sen. Henry & Sen. Blevins & Rep.
Walker & Rep. M. Smith

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 236

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO 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 Chapter 1, Title 8 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 102 Contents of certificate of incorporation.

4 (b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this
5 section, the certificate of incorporation may also contain any or all of the following matters:

6 (6) A provision imposing personal liability for the debts of the corporation on its stockholders based solely on
7 their stock ownership, to a specified extent and upon specified conditions; otherwise, the stockholders of a corporation shall
8 not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own
9 conduct or acts;

10 § 114 Application of chapter to nonstock corporations.

11 (b) Subsection (a) of this section shall not apply to:

12 (2) Sections 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163, 164, 165, 166, 167, 168, 203, 204, 205, 211,
13 212, 213, 214, 216, 219, 222, 231, 243, 244, 251, 252, 267, 274, 275, 324, 331, 364, 366(a), 391 and 502(a)(5) of this title;
14 and

15 § 331. Monetary liability of stockholders.

16 Notwithstanding any other provision of this chapter, neither the certificate of incorporation nor the bylaws of any
17 corporation may impose monetary liability, or responsibility for any debts of the corporation, on any stockholder of the
18 corporation, except to the extent permitted by Sections 102(b)(6) and 202 of this title.

19 Section 2. This Act shall become effective on August 1, 2014.

SYNOPSIS

New Section 331 is intended to confirm and codify the limited liability nature of corporations by expressly stating that provisions in a certificate of incorporation or bylaw may not impose monetary liability on stockholders, except in the very limited circumstances already provided for in the Delaware General Corporation Law. In *ATP Tours, Inc. v. Deutscher Tennis Bund* (No. 534, 2013, May 8, 2014), the Delaware Supreme Court upheld as facially valid a bylaw imposing liability for legal fees on certain members of a non-stock corporation who participated in the litigation. Together with the amendments to Section 114, new Section 331 is intended to limit applicability of that holding to non-stock corporations, and to make clear that such liability may not be imposed on holders of stock in stock corporations. The change to Section 102(b)(6) is intended to clarify that any certificate of incorporation provision that imposes stockholder liability for the debts of the corporation must impose such liability based on status as a stockholder, and not on any other status or action of the stockholder. The change to Section 102(b)(6) does not, however, modify or limit the possibility of liability not arising from a charter or bylaw provision, but based instead on a specific act or omission of a stockholder, such as guaranteeing debt of the corporation or engaging in tortious conduct affecting a third person. Under new Section 331 and Section 102(b)(6) as amended, a provision of the certificate of incorporation or bylaws that would purport to require a holder of stock in a stock corporation to pay expenses incurred by the corporation, its directors, officers, employees, agents or controlling stockholders in connection with litigation initiated or claims prosecuted by the stockholder would be facially invalid. New Section 331 would not prohibit bylaw provisions permitted by Section 112(5), inasmuch as such provisions do not contemplate personal liability of a stockholder in the absence of the stockholder's explicit affirmative consent (providing an undertaking to indemnify the corporation). Nothing in these amendments is intended to limit the power of a court to impose sanctions under applicable law or the enforceability of any provision included in the certificate of incorporation or bylaws that binds any person pursuant to any separate contract, agreement, deed or other instrument.

Author: Senator Townsend