

\$30,000

The amount each member of Dillard's special committee was paid for serving on the committee.

55

The number of stores Dillard's has in Texas, the most of any state.

\$6.22B

Dillard's total retail sales for its fiscal year that ended Feb. 1, down from \$6.48 billion the previous year.



Dillard's Inc. said that shifting its incorporation to Texas won't result in any change in headquarters or jobs. Below is its corporate headquarters in Little Rock.

MADLINE CIRCLE

Dillard's Move

Retailer seeks to shift incorporation from Delaware

BY MARK FRIEDMAN
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Dillard's Inc. will ask its shareholders tomorrow to approve moving its incorporation from Delaware to Texas.

If they assent, the Little Rock retail chain will be the latest company to exit Delaware, which has lost some of its historic luster as the prime state for incorporation.

Dillard's argues that relocation will be in the company's and its stockholders' best interest, though some legal experts question that assessment.

The company would avoid higher Delaware franchise taxes and may reduce the risk of frivolous lawsuits while expanding shareholders' rights, Dillard's said in a Securities & Exchange Commission filing.

If shareholders approve the proposal, the Texas reincorporation will become effective Aug. 31.

Dillard's incorporated in Delaware in 1964, following the path of thousands of corporations favoring the state for its reputation for judges with knowledge of business law and a corporate law framework prized for its uniformity.

But earlier this year, citing factors including company connections to other states and "certain high-profile litigation outcomes in Delaware," Dillard's board and management started discussing leaving Delaware.

The board formed a special committee of three members to investigate, and it eventually recommended transferring incorporation to Texas.

Support for companies leaving Delaware isn't unanimous, however, and some have argued that the move

could actually hurt shareholders.

"Directors and officers are framing that decision to reincorporate in Texas as supporting shareholders' rights," said Angela Aneiros, an associate professor at Lewis & Clark Law School of Portland, Oregon. She specializes in business law and wrote a Baylor Law Review article on the topic of reincorporation.

tate laws in Texas "protect directors and officers more and actually take away shareholders' rights," Aneiros said. "So they're like masquerading behind this [argument], 'Hey, shareholders, this is in your best interest.' When, in reality, it's in the directors' and officers' best interest because it limits their liability."

There's broad agreement that Delaware and Texas are very different environments.

"Delaware has a judicial focus

with courts crafting careful decisions applying general principles in a deeply informed and contextual way," said Benjamin Edwards, a law professor at the University of Nevada, Las Vegas, who has written about financial industry regulation. "Nevada and Texas have adopted a more bright-line statutory approach.

"What is better for companies and shareholders will be in the eye of the beholder," Edwards said in an email. "The market does not seem to place different values on companies based on their state of incorporation."

Leaving Delaware

For more than a century, Delaware has been known as the place for companies to incorporate their businesses.

"Delaware law has been so dominant for so long that it has become the common language for lots of business lawyers across the United States," Edwards said.

"If you create a Delaware entity, you usually know what you are getting."

But recent decisions in Delaware courts made some companies uneasy.

In 2024, the Delaware Court of Chancery rejected Elon Musk's nearly \$56 billion pay package from Tesla Inc., even though its stockholders approved it. That decision prompted Musk to post on his social media platform X: "Never incorporate your company in the state of Delaware."

Tesla has since moved its incorporation to Texas. Other companies that have made or are making similar moves are Tripadvisor, which incorporated in Nevada, and Andreessen Horowitz, the venture capital firm based in Silicon Valley, California.

Andreessen Horowitz said in a blog post last month that it was leaving Delaware and planned to incorporate in Nevada.

"It used to be a no-brainer: start a company, incorporate in Delaware," Andreessen Horowitz said in a July 9 post on its website. "That is no longer the case due to recent actions by the Court of Chancery, which have injected an unprecedented level of subjectivity into judicial decisions, undermining the court's reputation for unbiased expertise."

Companies have considered moving out of Delaware for several reasons including court decisions and rising insurance premiums for officers and directors.

In addition, plaintiffs' attorneys who sued companies have received "substantial" attorney fee awards, said Scott Sherman, co-chair of the Securities & Corporate Governance



Scott Sherman

Litigation Practice Group at the law firm of Nelson Mullins, which has offices across the country.

"Companies are looking at alternatives for those reasons amongst others," he said.

Dillard's board unanimously voted to form its special committee on the prospect of reincorporation in either Texas or Nevada earlier this year.

The committee, made up of Dillard's board members Rob C. Holmes, James I. Freeman and J.C. Watts, hired the law firms of Vinson & Elkins LLP, which has offices around the world, and Young Conaway Stargatt & Taylor LLP of Wilmington, Delaware.

The panel met five times,

Dillard's lawyers from the global law firm Haynes & Boone LLP were also involved in the decision.

After "extensive" discussions, the special committee decided that reincorporating in Texas was in Dillard's and its stockholders' best interest, according to Dillard's SEC filing.

The benefits include Dillard's operational connection to Texas, where it has 55 stores, more locations than in any other state. Dillard's stores in Texas also generate the most revenue for the retail chain. Dillard's operates 272 stores across 30 states, but none are in Delaware. Furthermore, its executives and management don't operate in Delaware.

The move also might reduce "opportunistic and frivolous litigation" filed against Dillard's and its directors and officers, resulting in helping Dillard's attract and keep managers and directors by lowering the risk of litigation, the filing said.

The move also will lower the company's corporate tax bill by eliminating its responsibility to pay higher Delaware franchise taxes,

which totaled more than \$250,000 in its 2024 fiscal year, the company said in the filing. Dillard's already pays Texas franchise tax, and that tax amount is not expected to change based on Dillard's state of incorporation, the filing said.

Texas Business Court

In 2023, the Texas Legislature created the Texas Business Court, making it welcoming for companies. Dillard's said in its SEC filing that Texas' business laws, which stem from statutes, would be more predictable than Delaware's decisions by judges.

Some experts believe that having the law spelled out in a statute "may give more certainty as to outcomes," Sherman said.

Aneiros said that Texas' corporate laws are more favorable for directors and officers. "Texas has amended their corporate law extensively, specifically limiting the liability of directors and officers and, at the same time, making it more difficult for shareholders to litigate in order to sue the directors or officers if they do something wrong," Aneiros said.

For example, the business judgment rule became part of Texas' corporate law statute, Aneiros said. That rule protects directors and officers from liability for bad business decisions if the transactions were made in good faith. By codifying the rule, Texas lawmakers "took away some of the power of a court to look at really specific things that might not fall right into the category of the business judgment rule there," she said.

Sherman said that the state of Delaware has

recently made some modifications to its corporation laws that are designed to ease concerns about its business atmosphere.

He said that law firms, including his, are regularly assessing if a company should reincorporate outside of Delaware.

"I think you're going to have a fair share of companies look at this issue of incorporation," he said. "How many is yet to be determined." ■



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