



## Delaware Fee-Shifting Bylaws Update

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Reading Time : **1 min**

Similar fee-shifting language has also shown up in a few pre-IPO corporate charters and in limited partnership agreements as well as in the bylaws of a few non-Delaware corporations. At least two corporations, Alibaba Group Holding Limited (a Cayman Islands company) and Smart & Final Stores, Inc., have gone public with variations of fee-shifting bylaws in place. Another twist on the topic is the adoption of a [Bill by the Oklahoma State Legislature](#) amending the Oklahoma General Corporation Act so as to require fee-shifting for all derivative suits brought in Oklahoma (even those brought against non-Oklahoma corporations). The Oklahoma Legislature did, however, provide a right of recovery of fees and costs for derivative plaintiffs who are successful. The Oklahoma legislative approach seems to have some merit in that it would likely work to prevent frivolous suits while at the same time encouraging plaintiffs with strong claims.

To date, no large, well-known U.S. corporation has adopted a fee-shifting bylaw provision (likely due to potential harm to investor relations) and it continues to be unclear whether the legality of such bylaws will be upheld by a Delaware (or other relevant) court. Corporations, especially large ones, should continue to exercise caution when considering the adoption of a fee-shifting bylaw provision.

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