

**504.635 Dismissal.**

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in [subsection 2 or 6](#) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

2. Unless a panel is appointed pursuant to [subsection 6](#), the determination in [subsection 1](#) shall be made by one of the following:

a. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

b. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

3. None of the following shall by itself cause a director to be considered not independent for purposes of [this section](#):

a. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

b. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

c. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

4. a. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member or director, the complaint shall allege with particularity facts establishing one of the following:

(1) That a majority of the board of directors did not consist of independent directors at the time the determination was made.

(2) That the requirements of [subsection 1](#) have not been met.

b. All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

5. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of [subsection 1](#) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of [subsection 1](#) have not been met.

6. The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of [subsection 1](#) have not been met.

[2004 Acts, ch 1049, §50, 192; 2012 Acts, ch 1023, §157](#)

Referred to in [§504.810](#)