

**490.744 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 5](#) 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 5](#), the determination in [subsection 1](#) shall be made by any of the following:

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

b. A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

3. a. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing any of the following:

(1) That a majority of the board of directors did not consist of qualified 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.

4. If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of [subsection 1](#) have not been met; if not, the corporation shall have the burden of proving that the requirements of [subsection 1](#) have been met.

5. Upon motion by the corporation, the court may appoint a panel of one or more individuals 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.

[2002 Acts, ch 1154, §27, 125; 2012 Acts, ch 1023, §157; 2013 Acts, ch 31, §21, 82; 2021 Acts, ch 165, §82, 230](#)

Referred to in [§490.143](#)