



Ohio Revised Code

Section 1706.614 Dismissal of derivative action.

Effective: April 12, 2021

Legislation: Senate Bill 276 - 133rd General Assembly

(A)(1) A derivative action in the right of a limited liability company shall be dismissed by the court on motion by the limited liability company if one of the groups specified in division (A)(2) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative action is not in the best interests of the limited liability company.

(2) Subject to the requirements of division (A)(3) of this section, the determination of whether the maintenance of a derivative action in the right of a limited liability company is in the best interests of the limited liability company shall be made by a majority vote of either of the following:

(a) The independent members of the limited liability company;

(b) The committee members of a committee consisting of independent members appointed by a majority of the independent members.

(3) If the determination is not made pursuant to division (A)(1) of this section, the determination shall be made by the person, or, in the case of more than one person, by a majority of the persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the limited liability company for those purposes.

(B)(1) A derivative action in the right of a series of a limited liability company shall be dismissed on motion by the series if one of the groups specified in division (B)(2) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative action is not in the best interests of the series.

(2) Subject to the requirements of division (B)(3) of this section, the determination whether the maintenance of a derivative action on behalf of a series of a limited liability company is in the best interests of the series shall be made by a majority vote of either of the following:



- (a) The independent members associated with the series;
- (b) The committee members of a committee consisting of independent members associated with the series appointed by a majority of the independent members associated with the series.
- (3) If the determination is not made pursuant to division (B)(1) of this section, the determination shall be made by the person, or, in the case of more than one person, by a majority of the persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the series for those purposes.
- (C) The court shall appoint only independent persons to the panel described in divisions (A)(3) and (B)(3) of this section.
- (D) The presence of one or more of the following circumstances, without more, shall not prevent a person from being considered independent for purposes of this section:
- (1) The naming of the person as a defendant in the derivative action or as a person against whom action is demanded;
- (2) The approval by that person of the act being challenged in the derivative action or demand where the act did not result in personal benefit to that person;
- (3) The making of the demand pursuant to section 1706.612 of the Revised Code or the commencement of the derivative action pursuant to sections 1706.61 to 1706.617 of the Revised Code.
- (E) Subject to section 1706.615 of the Revised Code, a panel appointed by the court pursuant to division (A)(3) or (B)(3) of this section shall have the authority to continue, settle, or discontinue the derivative proceeding as the court may confer upon the panel.
- (F) The plaintiff in the derivative action shall have the burden of proving that any of the requirements of division (A) or (B) of this section have not been met.