

The yellow highlight is direct lines that are different from the other.

§ 605.0801. Direct action by member.

(1) Subject to subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the **operating agreement or this chapter** or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the member, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the limited liability company.

§ 607.0750. Direct action by shareholder.

(1) Subject to subsection (2), a shareholder may maintain a direct action against another shareholder, an officer, a director, or the company, to enforce the shareholder's rights and otherwise protect the shareholder's interests, including rights and interests under the **articles of incorporation, the bylaws or this chapter** or arising independently of the shareholder relationship.

(2) A shareholder maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the corporation; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the shareholder, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the corporation.

Derivative Action

§ 605.0802. Derivative action.

A member may **maintain** a derivative **action** to enforce a right of a limited liability company if:

(1) The member first **makes a demand** on the other members in a member-managed limited liability company or the managers of a manager-managed

limited liability company requesting that the managers or other members cause the company to take suitable action to enforce the right, and the managers or other members do not take the action within a reasonable time, not to exceed 90 days; or

(2) A demand under subsection (1) would be futile, or irreparable injury would result to the company by waiting for the other members or the managers to take action to enforce the right in accordance with subsection (1).

§ 605.0803. Proper plaintiff.

A derivative action to enforce a right of a limited liability company may be commenced only by a person who is a member at the time the action is commenced and:

(1) Was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person who was a member when the conduct giving rise to the action occurred.

§ 607.0741. Standing.

(1) A shareholder may not commence a derivative proceeding unless the shareholder is a shareholder at the time the action is commenced and:

(a) Was a shareholder when the conduct giving rise to the action occurred; or

(b) Whose status as a shareholder devolved on the person through transfer or by operation of law from one who was a shareholder when the conduct giving rise to the action occurred.

(2) In ss. 607.0741-607.0747, the term “shareholder” means a record shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner.

- LLCs
 - Member must first make a demand on managers/members to enforce the right, unless demand is futile or waiting would cause irreparable harm.
 - Demand period is capped at 90 days.
 - Proper plaintiff is a member at the time the action is commenced, and either:
 - Was a member when the wrongful conduct occurred, OR
 - Became a member through operation of law (inheritance, divorce decree, etc.) or by terms of the operating agreement.
 - Note: This seems to contradict 605.0802 — since 605.0802 suggests action can be brought while injury is threatened/irreparable harm is pending, but 605.0803 limits it to conduct that has already occurred.
- Corporations
 - No derivative proceeding may be brought unless the shareholder already qualifies (standing).

- The statute doesn't focus on futility/irreparable harm the same way LLCs do; instead, it locks in who qualifies as a plaintiff.
- Proper plaintiff must be a shareholder at the time the action is commenced, and either:
 - Was a shareholder when the conduct giving rise to the action occurred, OR
 - Became a shareholder through transfer/operation of law.

§ 605.0804. Special litigation committee.

(1) If a limited liability company is named as or made a party in a derivative action, the company may appoint a special litigation committee to investigate the claims asserted in the derivative action and determine whether pursuing the action is in the best interest of the company. If the company appoints a special litigation committee, on motion, except for good cause shown, the court may stay any derivative action for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(a) Enforcing a person's rights under the company's operating agreement or this chapter, including the person's rights to information under s. 605.0410; or

(b) Exercising its equitable or other powers, including granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(2) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.

(3) A special litigation committee may be appointed:

(a) In a member-managed limited liability company, by the consent of the members who are not named as parties in the derivative action, who are otherwise disinterested and independent, and who hold a majority of the current percentage or other interest in the profits of the company owned by all of the members of the company who are not named as parties in the derivative action and who are otherwise disinterested and independent;

(b) In a manager-managed limited liability company, by a majority of the managers not named as parties in the derivative action and who are otherwise disinterested and independent; or

(c) Upon motion by the limited liability company, consisting of a panel of one or more disinterested and independent persons.

(4) After appropriate investigation, a special litigation committee shall determine what action is in the best interest of the limited liability company, including continuing, dismissing, or settling the derivative action or taking another action that the special litigation committee deems appropriate.

(5) After making a determination under subsection (4), a special litigation committee shall file or cause to be filed with the court a statement of its determination and its report supporting its determination and shall serve each party to the derivative action with a copy of the determination and report. Upon motion to enforce the

determination of the special litigation committee, the court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court may enforce the determination of the committee. Otherwise, the court shall dissolve any stay of derivative action entered under subsection (1) and allow the derivative action to continue under the control of the plaintiff.

§ 607.0743. Stay of proceedings.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 607.0744. Dismissal.

(1)A derivative proceeding may be dismissed, in whole or in part, by the court on motion by the corporation if a group specified in subsection (2) or subsection (3) 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. In all such cases, the corporation has the burden of proof regarding the qualifications, good faith, and reasonable inquiry of the group making the determination.

(2)Unless a panel is appointed pursuant to subsection (3), the determination required in subsection (1) shall be made by:

(a)A majority of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(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)Upon motion by the corporation, the court may appoint a panel consisting of one or more disinterested and independent individuals to make a determination required in subsection (1).

(4)This section does not prevent the court from:

(a)Enforcing a person's rights under the corporation's articles of incorporation or bylaws or this chapter, including the person's rights to information under s. 607.1602; or

(b)Exercising its equitable or other powers, including granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.