



2025-2026 General Assembly

# HOUSE BILL 388: Amend Business Corporations Act, Part V: Clarify and Revise Derivative Proceedings Procedures.

**Analysis of:** S.L. 2025-33, Part V

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**Prepared by:** Legislative Analysis  
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Part V of S.L. 2025-33 (House Bill 388) updates and clarifies the law governing derivative proceedings to provide that:

- Before a shareholder commences a derivative proceeding, the shareholder must deliver a written demand to the corporation describing the reasons for the demand and the action being requested.
- If the shareholder is a beneficial shareholder or an unrestricted voting trust beneficial owner, the written demand must be accompanied by evidence of the beneficial ownership.
- A determination that a derivative proceeding is not in the best interests of the corporation can be made before or after the commencement of the derivative proceeding.
- In order to contest this determination, the plaintiff has to allege facts establishing that the statutory requirements for dismissal of the action based on the determination have not been met.
- The plaintiff has the burden of proof on the issue of whether the statutory requirements for dismissal based on the determination have not been met, unless the plaintiff alleges with particularity facts establishing that a majority of the board of directors at the time the determination was made did not consist of independent directors, in which case the corporation has the burden of proving that the statutory requirements have been met.
- The court can order the plaintiff to pay the corporation's reasonable expenses, including attorneys' fees, incurred in responding to the demand or in defending the derivative proceeding if it finds that the demand was made or the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

This Part became effective October 1, 2025.

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