

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \*

IN THE MATTER OF THE AMENDMENT)  
SDCL 15-6-23.1 )

RULE 06-13

- - - - -  
A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-23.1, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-23.1 be and it is hereby amended to read in its entirety as follows:

**SDCL 15-6-23.1 Derivative actions by unincorporated associations.**

In a derivative action brought by one or more members to enforce a right of an unincorporated association, the association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege

- (1) That the plaintiff was a member at the time of the transaction of which he complains or that his membership thereafter devolved on him by operation of law, and
- (2) That the action is not a collusive one to confer jurisdiction on a court of the state which it would not otherwise have.

The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the members similarly situated in enforcing the right of the association. The action shall not be dismissed or compromised

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without the approval of the court, and notice of the proposed dismissal or compromise shall be given to members in such manner as the court directs.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2006.

DATED at Pierre, South Dakota, this 17th day of March, 2006

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 17 2006

  
Clerk