

**Effective 5/12/2015**

**16-6a-825 Conflicting interest transaction.**

- (1) As used in this section, "conflicting interest transaction" means a contract, transaction, or other financial relationship between a nonprofit corporation and:
  - (a) a director of the nonprofit corporation;
  - (b) a party related to a director; or
  - (c) an entity in which a director of the nonprofit corporation:
    - (i) is a director or officer; or
    - (ii) has a financial interest.
- (2) Except as otherwise provided in this section, upon the finding of a conflicting interest transaction, in an action properly brought before it, a court may:
  - (a) rule that the conflicting interest transaction is void or voidable;
  - (b) enjoin or set aside the conflict of interest transaction; or
  - (c) determine that the conflicting interest transaction gives rise to an award of damages or other sanctions.
- (3)
  - (a) A loan may not be made directly or indirectly by a nonprofit corporation to:
    - (i) a director or officer of the nonprofit corporation;
    - (ii) a natural person related to a director or officer; or
    - (iii) an entity in which a director, officer, or natural person related to a director or officer has any ownership, management right, or financial interest.
  - (b) A director or officer who assents to or participates in the making of a loan in violation of Subsection (3)(a) shall be liable to the nonprofit corporation for the amount of the loan until the repayment of the loan.
- (4)
  - (a) If the conditions of Subsection (4)(b) are met, a conflicting interest transaction may not be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because:
    - (i) the conflicting interest transaction involves:
      - (A) a director of the nonprofit corporation;
      - (B) a party related to a director; or
      - (C) an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest;
    - (ii) the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction; or
    - (iii) the director's vote is counted for the purpose described in Subsection (4)(a)(ii).
  - (b) Subsection (4)(a) applies if:
    - (i)
      - (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee; and
      - (B) the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum;
    - (ii)

- (A) the material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote on the conflicting interest transaction; and
- (B) the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon;
- (iii) the conflicting interest transaction is consistent with a provision in the articles of incorporation or bylaws which:
  - (A) commits the nonprofit corporation to support one or more other nonprofit corporations, charitable trusts, or charitable entities; or
  - (B) authorizes one or more directors to exercise discretion in making gifts or contributions to one or more other nonprofit corporations, charitable trusts, or charitable entities; or
- (iv) the conflicting interest transaction is fair as to the nonprofit corporation.
- (5) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee that authorizes, approves, or ratifies the conflicting interest transaction.
- (6) For purposes of this section, "a natural person related to a director or officer" means any natural person whose familial, financial, professional, or employment relationship with the director or officer would, under the circumstances, reasonably be expected to exert an influence on the director's or officer's judgment when voting on a transaction.

Amended by Chapter 240, 2015 General Session