

**16-6a-1502 Consequences of conducting affairs without authority.**

- (1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf, conducting affairs in this state without authority may not be permitted to maintain a proceeding in any court in this state until an application for authority to conduct affairs is filed.
- (2)
  - (a) A foreign nonprofit corporation or successor that conducts affairs in this state without authority shall be liable to this state in an amount equal to the sum of:
    - (i) all fees imposed by this chapter or prior law that would have been paid for all years or portions of years during which it conducted affairs in this state without authority; and
    - (ii) all penalties imposed by the division for failure to pay the fees described in Subsection (2)(a) (i).
  - (b) An application for authority to conduct affairs may not be filed until payment of the amounts due under this Subsection (2) is made.
- (3)
  - (a) A court may stay a proceeding commenced by a foreign nonprofit corporation, its successor, or assignee until it determines whether the foreign nonprofit corporation, its successor, or assignee is required to file an application for authority to conduct affairs.
  - (b) If the court determines that a foreign nonprofit corporation, its successor, or assignee is required to file an application for authority to conduct affairs, the court may further stay the proceeding until the required application for authority to conduct affairs has been filed with the division.
- (4)
  - (a) A foreign nonprofit corporation that conducts affairs in this state without authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business in this state without authority.
  - (b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection (4)(a) may not exceed a total of \$5,000 for each year.
  - (c) The following are subject to a civil penalty payable to the state not exceeding \$1,000:
    - (i) each officer of a foreign nonprofit corporation who authorizes, directs, or participates in the conducting of affairs in this state without authority; and
    - (ii) each agent of a foreign nonprofit corporation who transacts business in this state on behalf of a foreign nonprofit corporation that is not authorized.
  - (d) The division may make rules to carry out the provisions of this Subsection (4), including procedures to request the division to abate for reasonable cause a penalty imposed under this Subsection (4).
  - (e) If the division imposes a civil penalty under this Subsection (4) on a foreign nonprofit corporation, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the following may appeal the civil penalty to the executive director:
    - (i) the foreign nonprofit corporation; or
    - (ii) the representative of the foreign nonprofit corporation.
- (5)
  - (a) The civil penalties set forth in Subsection (4) may be recovered in an action brought:
    - (i) in an appropriate court in Salt Lake County; or
    - (ii) in any other county in this state in which the foreign nonprofit corporation:
      - (A) has a registered, principal, or business office; or
      - (B) has conducted affairs.

- (b) Upon a finding by the court that a foreign nonprofit corporation or any of its officers or agents have conducted affairs in this state in violation of this part, in addition to or instead of a civil penalty, the court shall issue an injunction restraining:
  - (i) the further conducting of affairs of the foreign nonprofit corporation; and
  - (ii) the further exercise of any corporate rights and privileges in this state.
- (c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit corporation shall be enjoined from conducting affairs in this state until:
  - (i) all civil penalties have been paid, plus any interest and court costs assessed by the court; and
  - (ii) the foreign nonprofit corporation has otherwise complied with the provisions of this part.
- (6) Notwithstanding Subsections (1) and (2), the failure of a foreign nonprofit corporation to have authority to conduct affairs in this state does not:
  - (a) impair the validity of its corporate acts; or
  - (b) prevent the foreign nonprofit corporation from defending any proceeding in this state.

Amended by Chapter 382, 2008 General Session