

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 1925 of the Regular Session**

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1739

5 By: Representative Thyer
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For An Act To Be Entitled

9 AN ACT TO STANDARDIZE THE PENALTIES FOR FAILING
10 TO REGISTER TO DO BUSINESS IN ARKANSAS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13 AN ACT TO STANDARDIZE THE PENALTIES FOR
14 FAILING TO REGISTER TO DO BUSINESS IN
15 ARKANSAS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 4-27-1502 is amended to read as follows:

22 4-27-1502. Consequences of transacting business without authority.

23 (a) A foreign corporation transacting business in this state without a
24 certificate of authority may not maintain a proceeding in any court in this
25 state until it obtains a certificate of authority.

26 (b) The successor to a foreign corporation that transacted business in
27 this state without a certificate of authority and the assignee of a cause of
28 action arising out of that business may not maintain a proceeding based on
29 that cause of action in any court in this state until the foreign corporation
30 or its successor obtains a certificate of authority.

31 (c) A court may stay a proceeding commenced by a foreign corporation,
32 its successor, or assignee until it determines whether the foreign
33 corporation or its successor requires a certificate of authority. If it so
34 determines, the court may further stay the proceeding until the foreign
35 corporation or its successor obtains the certificate.



~~(d) A foreign corporation is liable for a civil penalty of not more than five thousand dollars (\$5,000) and not less than one hundred dollars (\$100) if it transacts business in this state without a certificate of authority. The Secretary of State shall promulgate regulations for the calculation of the appropriate penalty. In determining the appropriate penalty, the Secretary of State shall consider the size and assets of the corporation, the total amount of business transacted by the corporation within the state and such other circumstances as the Secretary of State determines appropriate. The Secretary of State may institute proceedings in Pulaski County Circuit Court to recover such penalty.~~

(d)(1)(A) A foreign corporation that transacts business in this state without a certificate of authority shall pay a civil penalty to the state for each year and partial year during which it transacted business in this state without a certificate of authority.

(B) The penalty shall be the total of all fees imposed by this chapter upon a foreign corporation that properly obtains and renews a certificate of authority and all penalties imposed by this chapter for the failure to obtain or renew a certificate of authority.

(2) In addition to the penalty imposed under subdivision (d)(1) of this section, a foreign corporation that transacts business in this state without a certificate of authority shall pay a civil penalty to the state not to exceed five thousand dollars (\$5,000) for each year and partial year during which it transacted business without a certificate of authority, beginning with the date it began transacting business in this state and ending on the date it obtains a certificate of authority.

(3)(A) The penalties imposed by this subsection may be recovered in a suit brought by the Secretary of State.

(B)(i) In addition to any civil penalty, if the court finds that a foreign corporation has transacted business in violation of this chapter, then the court shall issue an injunction restraining the foreign corporation from any further transactions or the exercise of any rights and privileges in this state.

(ii) The injunction shall remain in effect until:

(a) All civil penalties and any interest and court costs assessed by the court have been paid; and

(b) The foreign corporation has complied with

1 the provisions of this subchapter.

2 ~~(e) Notwithstanding subsections (a) and (b) of this section, the~~ The
 3 failure of a foreign corporation to obtain a certificate of authority does
 4 not impair the validity of its corporate acts or prevent it from defending
 5 any proceeding in this state.

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 7 SECTION 2. Arkansas Code § 4-33-1502 is amended to read as follows:
 8 4-33-1502. Consequences of transacting business without authority.

9 (a) A foreign corporation transacting business in this state without a
 10 certificate of authority may not maintain a proceeding in any court in this
 11 state until it obtains a certificate of authority.

12 (b) The successor to a foreign corporation that transacted business in
 13 this state without a certificate of authority and the assignee of a cause of
 14 action arising out of that business may not maintain a proceeding on that
 15 cause of action in any court in this state until the foreign corporation or
 16 its successor obtains a certificate of authority.

17 (c) A court may stay a proceeding commenced by a foreign corporation,
 18 its successor, or assignee until it determines whether the foreign
 19 corporation or its successor requires a certificate of authority. If it so
 20 determines, the court may further stay the proceeding until the foreign
 21 corporation or its successor obtains the certificate.

22 ~~(d) A foreign corporation is liable for a civil penalty of not more~~
 23 ~~than five thousand dollars (\$5,000) and not less than one hundred dollars~~
 24 ~~(\$100) if it transacts business in this state without a certificate of~~
 25 ~~authority. The Secretary of State shall promulgate regulations for the~~
 26 ~~calculation of the appropriate penalty, taking into consideration the size~~
 27 ~~and assets of the corporation, the number of days the corporation has~~
 28 ~~transacted business within the state and the amount of business transacted.~~
 29 ~~The Secretary of State may institute proceedings in the Pulaski County~~
 30 ~~Circuit Court to collect all penalties due under this subsection.~~

31 (d)(1) A foreign corporation that transacts business in this state
 32 without a certificate of authority shall pay a civil penalty to the state not
 33 to exceed five thousand dollars (\$5,000) for each year and partial year
 34 during which it transacted business without a certificate of authority,
 35 beginning with the date it began transacting business in this state and
 36 ending on the date it obtains a certificate of authority.

1 (2)(A) The civil penalty imposed by this subsection may be
2 recovered in a suit brought by the Secretary of State.

3 (B)(i) In addition to any civil penalty, if the court
4 finds that a foreign corporation has transacted business in violation of this
5 chapter, the court shall issue an injunction restraining the foreign
6 corporation from any further transactions or the exercise of any rights and
7 privileges in this state.

8 (ii) The injunction shall remain in effect until:

9 (a) All civil penalties and any interest and
10 court costs assessed by the court have been paid; and

11 (b) The foreign corporation has complied with
12 the provisions of this subchapter.

13 ~~(e) Notwithstanding subsections (a) and (b) of this section, the~~ The
14 failure of a foreign corporation to obtain a certificate of authority does
15 not impair the validity of its corporate acts or prevent it from defending
16 any proceeding in this state.

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19 **APPROVED: 04/11/2005**
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