

ENROLLED ACT NO. 115, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to corporations, partnerships and associations; creating statutory foundations as a new form of entity; establishing procedures and standards for the management of statutory foundation affairs; specifying liability; imposing fees as specified; providing for the operation and transfer of foreign foundations; authorizing the adoption of rules and the establishment of fees; making conforming amendments; providing an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 17-30-101 through 17-30-106, 17-30-201 through 17-30-204, 17-30-301 through 17-30-309, 17-30-401, 17-30-402, 17-30-501 through 17-30-506, 17-30-601 through 17-30-603, 17-30-701 through 17-30-704, 17-30-801, 17-30-901 through 17-30-906, 17-30-1001 through 17-30-1003, 17-30-1101 and 17-30-1102 are created to read:

CHAPTER 30
WYOMING STATUTORY FOUNDATION ACT

ARTICLE 1
GENERAL PROVISIONS

17-30-101. Short title.

This chapter may be cited as the "Wyoming Statutory Foundation Act".

17-30-102. Definitions.

(a) As used in this act:

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(i) "Articles of formation" means the articles required by W.S. 17-30-303, including any amendments thereto and restatements thereof;

(ii) "Beneficiary" means a person designated as a beneficiary in the operating agreement of a statutory foundation, which may be any of the following:

(A) A person who has a present or future, vested or contingent, beneficial interest in the statutory foundation;

(B) If permitted under the terms in the operating agreement, a person designated as a beneficiary of the statutory foundation by the board of directors, at the discretion of the board of directors;

(C) A charitable organization, as defined in paragraph (v) of this subsection.

(iii) "Certificate of existence" means the certificate issued to a statutory foundation under W.S. 17-30-308;

(iv) "Certificate of registration" means the certificate of registration of a foreign foundation required under W.S. 17-30-1101;

(v) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of a health, governmental or municipal purpose or the achievement of other purposes which are beneficial to the community;

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(vi) "Contributor" means any person, excluding a founder, who contributes property to a statutory foundation;

(vii) "Court" means the district court of the county where a statutory foundation has its registered office or another court of competent jurisdiction which is the most appropriate forum in the circumstances;

(viii) "Financial institution" means as defined in W.S. 13-1-101(a)(ix);

(ix) "Foreign foundation" means an entity formed under the law of a foreign jurisdiction as a statutory foundation, pursuant to the law of the foreign jurisdiction, or which appears to the secretary of state to possess characteristics sufficiently similar to those of a statutory foundation organized under this act;

(x) "Founder" or "organizer" means one (1) or more persons that acts under W.S. 17-30-303 to form a statutory foundation;

(xi) "Insolvency law" means title 11, United States Code or successor federal statutes of general application;

(xii) "Operating agreement" means the written agreement, whether or not designated as an operating agreement, of a founder of a statutory foundation concerning the matters described in W.S. 17-30-309, including any amendments thereto and restatements thereof;

(xiii) "Person" means as defined in W.S. 8-1-102(a)(vi);

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(xiv) "Power" shall include discretion as to the way in which an act may be performed;

(xv) "Principal office" means the principal executive office of a statutory foundation or a foreign foundation, whether or not the office is located in this state;

(xvi) "Protector" means the person designated as a protector of a statutory foundation under W.S. 17-30-503;

(xvii) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xviii) "Registered agent" means a person appointed as a registered agent under W.S. 17-28-101 through 17-28-111;

(xix) "Sign" or "signature" shall include any manual, facsimile, conformed or electronic signature;

(xx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(xxi) "Statutory foundation" means an entity formed or continued under this act;

(xxii) "This act" means W.S. 17-30-101 through 17-30-1102.

17-30-103. Governing law.

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(a) This act governs:

(i) The internal affairs of a statutory foundation; and

(ii) The liability of a person as a founder or contributor of a statutory foundation for the debts, obligations or other liabilities of a statutory foundation.

(b) The transfer of property by a founder or a contributor to the statutory foundation, or any disposition made subject to the terms of the operating agreement of the foundation, shall not rendered ineffective for any reason, including the following:

(i) The law of a foreign jurisdiction prohibits or does not recognize the concept of a statutory foundation;

(ii) The statutory foundation, a transfer of property by a founder or a contributor to a foundation or a disposition made subject to the terms of the operating agreement of the foundation, avoids or defeats any forced heirship or legitimate right, claim or interest under the law of a foreign jurisdiction.

17-30-104. Supplemental principles of law.

The principles of law and equity shall supplement this act, unless in conflict with this act.

17-30-105. Electronic records and signatures.

The provisions of this act governing the legal effect, validity or enforceability of electronic records or

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electronic signatures, and of contracts formed or performed with the use of such records or signatures, shall be construed to conform to the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7002, and supersede, modify and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

17-30-106. Powers of secretary of state.

The secretary of state shall promulgate reasonable rules, forms and other requirements which are necessary to carry out the purposes of this act.

ARTICLE 2
PURPOSE, POWERS AND CAPITAL

17-30-201. Nature, purpose and duration of statutory foundations.

(a) A statutory foundation shall be an entity distinct from its founders, contributors, beneficiaries and any other persons.

(b) Unless stated otherwise in the articles of formation, a statutory foundation has perpetual duration.

(c) Except for those purposes provided in subsection (e) of this section, a statutory foundation may be created for any lawful purpose, which may be included in the articles of formation of the foundation, regardless of whether the foundation is for profit or for charitable purposes, as defined in W.S. 17-30-102(a)(v), provided that a statutory foundation shall:

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(i) Confer a benefit on at least one (1) person;
and

(ii) Be authorized to hold tangible and intangible property and accumulate income generated by that property for the purposes of this act.

(d) In addition to those purposes provided in subsection (c) of this section, a statutory foundation may be organized for the purpose of holding or investing in other entities or assets, including those entities or assets that are the property of the statutory foundation.

(e) A statutory foundation may not be created to act as a financial institution or an insurer, as defined in W.S. 26-1-102(a)(xvi).

(f) The purposes for which a statutory foundation may be created under this act shall not be amended or restated unless the articles of formation expressly provide that the purpose of the statutory foundation "may be amended", "may be restated" or include words of similar import or an amendment or restatement is required pursuant to a court order.

17-30-202. Enforcement of charitable purposes.

(a) If the articles of formation or the operating agreement of a statutory foundation formed for a charitable purpose do not indicate or otherwise provide for selection of a particular charitable purpose or beneficiary, or if the designated charitable purpose cannot be completed or no longer exists, the court may select one (1) or more charitable purposes or beneficiaries. The selection shall be consistent with the intent of the founder, to the extent intent can be ascertained.

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(b) A founder, the board of directors or the protector of a statutory foundation formed for a charitable purpose may commence a civil action to enforce the charitable purpose of the statutory foundation.

17-30-203. Powers of a statutory foundation.

A statutory foundation has the capacity to sue and be sued in its own name and has the power to take all actions necessary or convenient to carry on the activities of the foundation.

17-30-204. Property contribution.

(a) The initial property contributed to a statutory foundation may consist of tangible or intangible property, whether or not the contribution is made as a gift or otherwise.

(b) After the contribution of initial property to the statutory foundation, and if permitted by the operating agreement of the foundation, additional contributions may be made to the statutory foundation by a founder or any contributor.

(c) The tangible and intangible property of the statutory foundation may include:

(i) Initial contributions of property;

(ii) Additional contributions of property;

(iii) Any accumulated income.

ARTICLE 3

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NAME, FORMATION, ARTICLES OF FORMATION, OTHER FILINGS AND
ORGANIZATIONAL DOCUMENTS

17-30-301. Name of a statutory foundation.

(a) The words "statutory foundation", or its abbreviations "SF" or "S.F.", shall be included in the name of a statutory foundation formed under this act. A statutory foundation name shall not:

(i) Contain words indicating or implying that the foundation is organized for a purpose other than one (1) or more of the purposes contained in its articles of formation;

(ii) Be the same as, or deceptively similar to in the determination of the secretary of state, any trademark or service mark registered in this state. The name shall be distinguishable by the secretary of state from other business names as provided in W.S. 17-16-401;

(iii) Contain a word or phrase which indicates or implies that it is organized under the Wyoming Business Corporation Act, the Wyoming Statutory Close Corporation Supplement, the Wyoming Nonprofit Corporation Act, the Wyoming Limited Liability Company Act or the Wyoming Statutory Trust Act.

(b) Nothing in this article shall prohibit the use of a trade name in accordance with applicable law.

17-30-302. Registered office and registered agent.

(a) Each statutory foundation shall continuously maintain a registered office and registered agent, as provided in W.S. 17-28-101 through 17-28-111, in this state.

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(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all statutory foundations.

17-30-303. Formation of statutory foundation; articles of formation.

(a) One (1) or more persons may act as an organizer to form a statutory foundation by signing and delivering articles of formation to the secretary of state. Articles of formation shall be accompanied by a written consent of appointment signed by a registered agent.

(b) Articles of formation shall state:

(i) The name of the statutory foundation, which shall comply with W.S. 17-30-301; and

(ii) The street address of the statutory foundation's initial registered office and the name of its initial registered agent at that office.

(c) Articles of formation may state:

(i) The names and addresses of the individuals who are to serve as the initial directors;

(ii) The name and address of the individual who is to serve as the initial protector;

(iii) Other provisions not inconsistent with law, which may include:

(A) The purpose for which the statutory foundation is organized;

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(B) An express statement that the purpose of the statutory foundation "may be amended", "may be restated" or words of similar import, pursuant to W.S. 17-30-201(f);

(C) A statement of the duration of the statutory foundation;

(D) Any provision under this act that is required or permitted to be stated in the operating agreement.

(d) A statutory foundation is formed when the articles of formation become effective. The filing of articles of formation by the secretary of state is conclusive proof that the organizer has satisfied all conditions required for the formation of a statutory foundation, except in a civil action commenced by the state of Wyoming to terminate a statutory foundation. In that case, a court may require other additional evidence as it determines appropriate.

17-30-304. Signing of records to be delivered for filing to secretary of state.

(a) A record delivered to the secretary of state for filing under this act shall be signed as follows:

(i) Except as otherwise provided by this subsection, a record signed on behalf of a statutory foundation shall be signed by a person who has appropriate authority granted by the foundation;

(ii) The initial articles of formation of a statutory foundation shall be signed by at least one (1) person acting as founder or organizer;

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(iii) A record filed on behalf of a terminated statutory foundation that has no founders shall be signed by the person winding up the activities of the foundation under article 9 of this chapter, the organizer or another person appointed by the board of directors of the foundation;

(iv) Any other record shall be signed by the person on whose behalf the record is delivered to the secretary of state or by the person appointed by the board of directors of the statutory foundation.

(b) Any record filed under this act may be signed by an agent.

17-30-305. Delivery to and filing of records by secretary of state; effective time and date.

(a) A record authorized or required to be delivered to the secretary of state for filing under this act shall be captioned to describe the purpose of the record and be delivered to the secretary of state in an authorized medium. The secretary of state shall file the record upon receipt, unless:

(i) The secretary of state determines that a record does not comply with the filing requirements of this act;

(ii) The filing fees required by this act or other provisions of law or past due fees, taxes or penalties have not been paid.

(b) Upon filing the record, the secretary of state shall send a copy of the filed record and a receipt for fees to the person on whose behalf the record was filed.

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(c) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(d) Except as otherwise provided in this section and W.S. 17-28-103, a record delivered to the secretary of state for filing under this act shall be effective as of the date of filing by the secretary of state.

17-30-306. Correcting filed record.

(a) A statutory foundation or foreign foundation may deliver to the secretary of state for filing a statement of correction to correct a record if the record contained inaccurate information or a defective signature.

(b) A statement of correction shall:

(i) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(ii) Specify the inaccurate information and the reason the information is inaccurate or the manner in which the signature was defective; and

(iii) Correct the inaccurate information or defective signature.

(c) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, except that the statement shall be effective when filed in the context of persons that previously relied on the uncorrected record and would be adversely impacted by retroactive effect.

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17-30-307. Liability for inaccurate information in filed record.

(a) If a record delivered to and filed by the secretary of state under this act contains inaccurate information, a person that suffers a loss by relying in good faith on the record may recover damages relating to the loss from the statutory foundation or foreign foundation if:

(i) The record was delivered for filing on behalf of the statutory foundation or foreign foundation; and

(ii) The statutory foundation or foreign foundation had notice of the inaccuracy for a reasonably sufficient time and was able to correct the record in the period of time before the record was relied upon.

(c) An individual who signs a record authorized or required to be filed with the secretary of state under this act shall affirm, under penalty of perjury, that the information stated in the record is accurate.

17-30-308. Certificate of existence.

(a) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a statutory foundation or a foreign foundation.

(b) A certificate of existence shall state:

(i) The name of the statutory or foreign foundation used in this state;

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(ii) That the statutory foundation was duly formed under the laws of this state and the date of formation, or that the foreign foundation is registered in this state;

(iii) Whether all fees, taxes and penalties due under this act or under other provisions of law have been paid;

(iv) Whether the most recent annual report required pursuant to W.S. 17-30-703 has been filed by the secretary of state;

(v) Whether the secretary of state has classified the statutory foundation or foreign foundation as delinquent;

(vi) Whether articles of termination were delivered to the secretary of state for filing; and

(vii) Other facts of record maintained by the secretary of state which are specified by the person requesting the certificate of existence.

(c) Subject to any qualification stated in a certificate of existence, a certificate of existence issued by the secretary of state shall be conclusive evidence that the statutory foundation or foreign foundation is in existence.

17-30-309. Operating agreement; scope, function and limitations.

(a) The founders or board of directors of a statutory foundation shall adopt an operating agreement for the foundation as soon as possible after filing articles of formation with the secretary of state.

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(b) An operating agreement may contain any provision for managing the business and regulating the affairs of the statutory foundation that is not inconsistent with this act, other provisions of law or the articles of formation of the foundation.

ARTICLE 4
FOUNDERS

17-30-401. Reservation to founder of power to amend, revoke, restate or terminate.

(a) Subject to subsections (b) and (c) of this section, a founder may reserve the following powers to himself, or a specific number of founders if applicable:

(i) The power to amend or restate the articles of formation of a statutory foundation;

(ii) Pursuant to W.S. 17-30-201, the power to amend the purposes of the statutory foundation;

(iii) The power to amend, revoke or restate the terms of the operating agreement of the statutory foundation;

(iv) The power to terminate the statutory foundation.

(b) A founder must expressly reserve those powers specified in paragraphs (a)(i) and (ii) of this section in the articles of formation of the statutory foundation. The founder may expressly reserve those powers specified by paragraphs (a)(iii) and (iv) of this section in the articles of formation.

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(c) Unless the articles of formation or operating agreement of a statutory foundation provide otherwise, any powers reserved to a founder in subsection (a) of this section shall lapse on the death, dissolution or termination of the founder.

17-30-402. Protection from founder's successors.

(a) The heirs, spouse or creditors of a founder shall not:

(i) Amend or restate the articles of formation of a statutory foundation;

(ii) Amend the purpose of a statutory foundation, if any;

(iii) Terminate the statutory foundation.

ARTICLE 5
DIRECTORS AND PROTECTORS

17-30-501. Board of directors.

(a) A statutory foundation shall maintain a board of directors.

(b) Unless the articles of formation or operating agreement of a statutory foundation provide otherwise:

(i) The board of directors of the foundation shall have the authority to exercise all powers of the foundation and to manage foundation affairs;

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(ii) The board of directors shall consist of one (1) or more persons;

(iii) One (1) or more founders may be appointed as a director; and

(iv) No director shall simultaneously serve as a director and a protector for the same statutory foundation.

(c) A board of directors shall conduct the affairs of the statutory foundation in accordance with the articles of formation and operating agreement, if any, of the foundation, as well as this act and any other applicable provision of law.

(d) Each director shall act:

(i) In good faith; and

(ii) In a manner not opposed to the best interests of the statutory foundation.

(e) An act of a director shall be retroactively valid despite any defect that may be found in:

(i) The appointment of the director;

(ii) The qualifications of the director.

17-30-502. Liability of directors.

A director is not personally liable for the acts, omissions, obligations or debts of the statutory foundation, whether arising in contract, tort or otherwise.

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17-30-503. Protector.

(a) If a statutory foundation has a charitable purpose, the foundation shall maintain a protector in relation to that purpose.

(b) If a statutory foundation has any purpose permitted under this act other than a charitable purpose, then the foundation may have a protector in relation to that purpose.

(c) Except as otherwise provided by law, a founder or other person may be appointed as the protector of a statutory foundation.

(d) The operating agreement of a statutory foundation may authorize a protector to approve or disapprove any specified action of the board of directors of the statutory foundation.

17-30-504. Protector as a fiduciary.

A protector shall serve as a fiduciary to the extent of authority and duties granted under the terms of the operating agreement.

17-30-505. Liability of protector.

(a) Except as otherwise provided in subsection (b) of this section, the debts, obligations or other liabilities of a statutory foundation, whether arising in contract, tort or otherwise:

(i) Are solely the debts, obligations or other liabilities of the foundation; and

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(ii) Do not become the debts, obligations or other liabilities of a protector solely by reason of the protector performing his duties.

(b) A court may impose liability for the debts, obligations or other liabilities of the statutory foundation on a protector in the following circumstances, except that no single factor other than fraud is sufficient to impose liability:

(i) Fraud;

(ii) Inadequate capitalization;

(iii) Failure to observe foundation formalities as required by law;

(iv) Intermingling of assets, business operations and finances of the foundation and the protector to such an extent that there is no distinction between them.

(c) A court shall not consider factors intrinsic to the character and operation of a statutory foundation under subsection (b) of this section. These factors shall include:

(i) The ability to elect treatment as a disregarded or pass-through entity for tax purposes;

(ii) Flexible operation or organization, including the failure to observe any particular formality relating to the exercise of the powers of the foundation or management of activities;

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(iii) The exercise of ownership, influence and governance by a protector;

(iv) The protection of the personal assets of the protector from the obligations and acts of the foundation.

17-30-506. Conflict of interest transactions.

(a) A sale, encumbrance or other transaction involving the investment or management of the property of the statutory foundation which is entered into by a director or protector for the personal account of the director or protector or which is otherwise affected by a conflict between the fiduciary or personal interests of the director or protector is voidable by a beneficiary affected by the transaction unless:

(i) The transaction was authorized by the terms of the operating agreement;

(ii) The transaction was approved by a court;

(iii) The beneficiary did not commence a judicial proceeding within the time specified by W.S. 4-10-1005;

(iv) The beneficiary consented to the transaction, ratified the transaction or released the director or protector pursuant to W.S. 4-10-1009; or

(v) The transaction involves a contract entered into, or claim acquired by the director or protector, before the person became or contemplated becoming a director or protector.

ARTICLE 6
BENEFICIARIES

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17-30-601. Beneficiaries.

(a) The articles of formation or operating agreement of a statutory foundation may provide for the distribution of property of the foundation to one (1) or more beneficiaries.

(b) Notwithstanding subsection (a) of this section, a beneficiary of a statutory foundation shall not have the right to, or interest in, property of the statutory foundation unless such right or interest arises by express terms stated in the operating agreement of the statutory foundation.

17-30-602. Beneficial interest.

(a) A beneficiary may have a beneficial interest in the property of the statutory foundation in the form of cash, property, a promissory note or other obligation. A beneficiary may have a beneficial interest in a statutory foundation without making a contribution, or being obligated to make a contribution, to the foundation.

(b) Except to the extent otherwise provided in the governing instrument, a beneficial owner shall have an undivided beneficial interest in the property of the statutory foundation and shall share in the profits or losses of the foundation in the proportion of the entire undivided beneficial interest he owns in the foundation. The governing instrument of a statutory foundation may provide that the foundation or the directors, acting for and on behalf of the foundation, shall be deemed to hold beneficial ownership of any income earned on securities of the foundation issued by any business entities formed, organized or existing under the

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laws of any jurisdiction, including the laws of any foreign country.

(c) No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the statutory foundation.

(d) The beneficial interest of a beneficial owner in the statutory foundation is personal property notwithstanding the nature of the property of the foundation. Except to the extent otherwise provided in the governing instrument, a beneficial owner has no interest in specific foundation property.

(e) Except to the extent otherwise provided in the governing instrument, the transferee of the beneficial interest of a beneficial owner in the statutory foundation shall only be entitled to receive the share of profits and the return of contributions to which the beneficial owner otherwise would be entitled. In the absence of the unanimous written consent of the owners of all other beneficial interests and of all directors of the foundation, and except to the extent otherwise provided in the governing instrument, the transferee of the beneficial interest of a beneficial owner shall have no right to participate in or be kept apprised of the affairs of the foundation or to become a beneficial owner of a beneficial interest in the foundation.

(f) Except to the extent otherwise provided in the governing instrument, at the time a beneficial owner becomes entitled to receive a distribution, the owner has the status of, and is entitled to all remedies available to, a creditor of the statutory foundation with respect to the distribution. A governing instrument may provide for the establishment of

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record dates with respect to allocations and distributions by a statutory foundation.

17-30-603. Limitation of transferability of rights.

Subject to the operating agreement of the statutory foundation, a beneficial interest in a foundation is transferable.

ARTICLE 7
RECORDS AND REPORTS

17-30-701. Right to information.

(a) Unless the operating agreement of a statutory foundation provides otherwise, upon written request by a beneficiary, the foundation shall provide, within a reasonable time, a copy of the operating agreement of the foundation to the beneficiary. Information regarding beneficiaries other than the beneficiary making a request under this section may be redacted.

(b) Upon written request by a protector, a statutory foundation shall provide all information requested by the protector within a reasonable time. After the death of the last founder of a statutory foundation or if there is no protector, the foundation shall provide all information requested by a beneficiary within a reasonable time, upon written request by a beneficiary.

(c) Except as otherwise provided in this section, no beneficiary shall have the right to receive information related to the administration, operation or affairs of a statutory foundation.

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17-30-702. Recordkeeping and identification of statutory foundation property.

(a) The board of directors of a statutory foundation shall keep and maintain adequate records regarding the administration of the foundation.

(b) The board of directors of a statutory foundation may invest property of two (2) or more statutory foundations as a whole as long as the board maintains clear records indicating the respective interests of each foundation.

17-30-703. Annual report for secretary of state.

(a) Every statutory foundation formed under the laws of this state and every foreign foundation that obtains a certificate of registration shall file an annual report, under penalty of perjury, with the secretary of state on or before the first day of the month of formation. The annual report shall contain the address of the principal office of the statutory foundation or the foreign foundation.

(b) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting statutory foundation or foreign foundation in writing and return the annual report for correction.

(c) Every statutory foundation formed under the laws of this state and every foreign foundation registered in this state shall preserve annual reports at its principal office for three (3) years after submission to the secretary of state.

17-30-704. Fees; annual fee.

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(a) The secretary of state shall collect the following fees from statutory foundations and foreign statutory foundations:

(i) Filing the original articles of formation or issuing a certificate of authority for a foreign statutory foundation, a fee of two hundred fifty dollars (\$250.00);

(ii) Filing amended articles of formation, a fee of one hundred dollars (\$100.00);

(iii) Filing the annual report required under W.S. 17-30-703, due and payable on or before the date of the annual filing, a fee of one hundred dollars (\$100.00);

(iv) A fee for other services provided by the secretary of state which is not established by this section, including other filings, service of process and copying, provided the fee shall not exceed the actual cost of the service.

ARTICLE 8
RIGHTS AND LIMITATIONS OF CREDITORS

17-30-801. Creditor claim against founder.

The property of a statutory foundation contributed by a founder, and all income, appreciation and proceeds thereof, shall not be subject to the claims of a founder's creditor, including any claims for forced heirship or legitime right.

ARTICLE 9
TERMINATION

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17-30-901. Termination.

(a) A statutory foundation may be terminated, and its activities wound up, upon the occurrence of any of the following:

(i) An event or circumstance provided in the operating agreement or articles of formation of the foundation that results in or authorizes termination;

(ii) Upon consent of all adult beneficiaries, the founder and the protector, if any, agree to terminate the statutory foundation, provided that this consent is only valid to the extent that termination is not inconsistent with a material purpose of the statutory foundation;

(iii) Upon a finding of a court that the purpose of the statutory foundation can no longer be achieved.

17-30-902. Cancellation of articles of formation.

(a) The articles of formation of the statutory foundation shall be cancelled upon the completion of termination and winding up of the foundation. A certificate of cancellation shall be filed with the secretary of state and shall set forth:

(i) The name of the statutory foundation;

(ii) The date of filing of its articles of formation; and

(iii) Any other information the board of directors determines is necessary or advisable for inclusion.

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(b) The certificate of cancellation shall be effective as of the filing date.

17-30-903. Claims against terminated statutory foundation.

(a) A terminated statutory foundation may publish notice of termination and, in the notice, request persons with claims against the foundation to present them in accordance with the notice.

(b) The notice authorized by subsection (a) of this section shall:

(i) Be published at least once in a newspaper of general circulation in the county of this state in which the principal office of the terminated statutory foundation was located or, if the foundation does not have a principal office in this state, in the county in which the designated office of the foundation is or was last located;

(ii) Describe the information required to be contained in a claim and provide a mailing address to which a claim may be sent; and

(iii) State that a claim against the foundation is barred one hundred twenty (120) days after the date of first publication of the notice.

(c) A creditor may file a claim against the assets of a terminated statutory foundation within the earlier of:

(i) One hundred twenty (120) days after the termination of the statutory foundation;

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(ii) If the terminated statutory foundation publishes a notice under subsection (a) of this section, one hundred twenty (120) days after the first publication of a notice complying with subsection (b) of this section; or

(iii) One hundred twenty (120) days after a known creditor has been mailed notice, by certified mail return receipt requested. As part of notice under this paragraph, notice shall inform a known creditor:

(A) Of the information required to be included in a claim;

(B) Of the name of the terminated statutory foundation and the mailing address to which a claim may be sent; and

(C) Of the deadline for the known creditor to make a claim, one hundred twenty (120) days after a notice is mailed by certified mail return receipt requested.

(d) A creditor failing to file a claim within the times set forth in this section is prohibited from making a claim against the assets of a terminated statutory foundation.

17-30-904. Administrative forfeiture of authority and articles of formation.

(a) If the registered agent of the statutory foundation has filed its resignation with the secretary of state and the foundation has not replaced its registered agent, or the statutory foundation is without a registered agent or registered office in this state for any reason, the foundation shall be deemed to be operating in this state without

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authority and to have forfeited any rights or privileges acquired under the laws of this state.

(b) A forfeiture under subsection (a) of this section shall be made effective as follows:

(i) The secretary of state shall mail by first class mail, or submit by electronic means if the statutory foundation has consented to receive notices electronically, a notice of the failure of the statutory foundation to comply with subsection (a) of this section; and

(ii) Unless compliance is made within sixty (60) days of mailing or electronic submission, the statutory foundation shall be deemed defunct and to have forfeited its articles of formation filed in this state.

(c) A statutory foundation, at any time within two (2) years after a forfeiture under subsection (a) or (b) of this section, may be revived and reinstated by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of two hundred fifty dollars (\$250.00). A reinstatement fee under this subsection shall not exceed the costs of providing the reinstatement service. The foundation shall retain its registered name during the two (2) year reinstatement period under this section.

(d) If a statutory foundation has failed to pay any fee required by the secretary of state under W.S. 17-30-704 or any penalties imposed under W.S. 17-28-109, the statutory foundation shall be deemed to be operating within this state without authority and to have forfeited any rights or privileges acquired under the laws of this state.

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(e) A forfeiture under subsection (d) of this section shall be made effective as follows:

(i) The secretary of state shall provide notice to the statutory foundation at its last known mailing address by first class mail, or submit by electronic means if the statutory foundation has consented to receive notices electronically, a notice of the failure of the statutory foundation to comply; and

(ii) Unless compliance is made within sixty (60) days of the date of mailing of the notice, the statutory foundation shall be deemed defunct and to have forfeited its articles of formation filed in this state.

(f) A statutory foundation, at any time within two (2) years after a forfeiture under subsection (d) of this section, may be revived and reinstated by paying the delinquent fees.

(g) Upon reinstatement of a statutory foundation under this section, the reinstatement shall relate back to and take effect as of the date the forfeiture was made effective under this section and the statutory foundation may resume carrying on operations as if the forfeiture was never effective.

(h) A statutory foundation shall be deemed to be operating within this state without authority, to have forfeited any rights or privileges acquired under the laws of this state and shall be deemed to have forfeited its articles of formation filed in this state if:

(i) An organizer, founder or any other person authorized to act on behalf of the foundation signed a document he knew was false in any material respect with intent

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that the document be delivered to the secretary of state for filing;

(ii) The statutory foundation has failed to respond to a valid subpoena; or

(iii) The public interest is served by forfeiture and the statutory foundation, its founder or any other person authorized to act on behalf of the statutory foundation:

(A) Failed to provide records to the registered agent as required by this act;

(B) Provided fraudulent information or failed to correct false information upon request of the secretary of state on any filing under this act;

(C) Cannot be served by either the registered agent or by the secretary of state using mail and acting as the agent for process.

(j) The secretary of state may classify a statutory foundation as delinquent and as awaiting forfeiture of its articles of formation at the time the secretary of state mails any notice required under this section to the foundation.

17-30-905. Appeal from rejection of reinstatement.

Appeals from decisions of the secretary of state made under this act shall occur as provided in W.S. 17-16-1423.

17-30-906. Distribution upon termination.

Upon the occurrence of an event terminating a statutory foundation, including forfeiture under this section, the

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board of directors shall proceed expeditiously to distribute the property of the foundation as provided in the articles of formation or the operating agreement of the foundation.

ARTICLE 10
JUDICIAL PROCEEDINGS

17-30-1001. Role of court in administration.

(a) The court may intervene in the administration of a statutory foundation only to the extent its jurisdiction is invoked as provided in this act or as otherwise provided by law.

(b) A statutory foundation is not subject to continuing judicial supervision unless ordered by a court.

(c) A civil proceeding to approve or disapprove a proposed decision or transaction of a statutory foundation may be commenced by the board of directors of the foundation.

17-30-1002. Power of court to give directions.

(a) Upon application to the court by a founder, protector or statutory foundation, the court may issue a declaratory judgment regarding the following:

(i) The meaning and effect of a provision in the articles of formation or operating agreement of the foundation;

(ii) The administration of the property or purpose of the foundation;

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(iii) The function of the board of directors of the foundation;

(iv) Such other matters as determined by the court to be relevant to the statutory foundation and its purpose.

(b) If there is no express power to amend the purpose of a statutory foundation in the articles of formation of the foundation, then a founder or the protector may apply to a court for an order to amend the purpose stated in the articles in accordance with the probable intent of the founder, based on one (1) of the following grounds:

(i) The purpose stated in the articles of formation has been fulfilled;

(ii) The purpose stated in the articles of formation cannot be carried out in accordance with the intent of the founder;

(iii) The purpose stated in the articles of formation provides a use for only part of the property of the foundation;

(iv) The purpose stated in the articles of formation cannot be completed or no longer exists.

17-30-1003. Sealing and availability of documents.

Except for information that is otherwise publicly available, the privacy of persons who have organized a statutory foundation shall be protected in any judicial proceeding. A filed document or court order issued concerning a statutory foundation shall be sealed and shall not be made a part of the public record of the proceeding except as otherwise

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required by law. A filed document or court order issued shall be available to the court, a founder, the board of directors, a protector, the attorney of any of the persons specified in this section and any other interested person as the court may order upon a showing of need.

ARTICLE 11
CONTINUANCE AND TRANSFER

17-30-1101. Continuance.

(a) Consistent with subsection (d) of this section, a foreign foundation organized under the laws of a foreign jurisdiction may apply to the secretary of state for registration under this act, upon acknowledgement by the foreign jurisdiction that the domicile of the foreign foundation in that jurisdiction has terminated.

(b) The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance specified by subsection (e) of this section together with the other statements, information and documents required by this section.

(c) Upon issuance of a certificate of registration by the secretary of state, the foreign foundation shall continue to operate under the laws of this state as if the foreign foundation had been organized as a statutory foundation in this state. The secretary of state may impose limitations or conditions on a certificate of registration as appropriate.

(d) The secretary of state shall cause notice of issuance of a certificate of registration to be given to the proper officer of the foreign jurisdiction in which the foreign foundation was previously organized.

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(e) Articles of continuance filed with the secretary of state by a foreign foundation under this section shall contain:

(i) A certified copy of the original articles of formation of the foundation, including any amendments thereto, or its equivalent basic charter or other authorization;

(ii) The name of the foreign foundation and the foreign jurisdiction in which the foundation was lawfully organized;

(iii) The date of organization of the foreign foundation in the foreign jurisdiction;

(iv) The principal mailing address of the foreign foundation;

(v) The name and address of the proposed registered agent in this state;

(vi) Any additional information specified for articles of formation under W.S. 17-30-303.

(f) An application for articles of continuance shall be executed by any member of the board of directors of the foreign foundation or any officer authorized to execute the application on behalf of the foundation.

(g) The provisions of the articles of continuance may vary from the provisions of the articles of formation of the foreign foundation, the equivalent basic charter or other authorization in the foreign jurisdiction only if those

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variations could be lawfully effectuated by amending articles of formation as otherwise provided under this act.

(h) Upon issuance of a certificate of registration by the secretary of state, the articles of continuance shall be deemed to be the articles of formation of the foreign foundation. The foreign foundation may elect to incorporate by reference in its articles of continuance the basic charter or other authorization adopted in the foreign jurisdiction in which the foreign foundation was formed, for the purpose of continuing to act under the charter or other authorization, provided that the basic charter or other authorization shall be deemed amended to the extent necessary to make the charter or authorization conform to this act and other provisions of law.

(j) The existence of a foreign foundation that is issued a certificate of continuation under this act shall be deemed to have commenced on the date the foreign foundation commenced its existence in the foreign jurisdiction in which it was first formed, organized or otherwise came into being. The laws of this state shall apply to a foreign foundation continuing under this act to the same extent as if it had been organized under the laws of this state from and after the issuance of a certificate of continuation under this act by the secretary of state. If a foreign foundation is continued under this act, the continuance shall not affect the ownership of its property or its liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, or other convictions, rulings, orders or judgments.

17-30-1102. Transfer of a statutory foundation to another jurisdiction.

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(a) A statutory foundation formed or continued under this act may, if authorized under subsection (f) of this section and by the laws of the foreign jurisdiction, apply to the proper officer of the foreign jurisdiction for a certificate of registration and to the secretary of state of this state for a certificate of transfer. The application for a certificate of transfer shall set forth the following:

(i) The name of the statutory foundation immediately before the transfer, and if that name is unavailable for use in the foreign jurisdiction or, if the foundation desires to change its name in connection with the transfer, the name by which the foundation will be known in the foreign jurisdiction;

(ii) The name of the foreign jurisdiction to which the foundation is to be transferred;

(iii) Acknowledgement that the foundation shall surrender its articles of formation under this act upon transfer to the foreign jurisdiction; and

(iv) A statement that the transfer was duly approved by the board of directors in the manner required by subsection (f) of this section.

(b) The secretary of state shall require that a statutory foundation transferred under this section maintain an agent for service of process within this state for at least one (1) year after the transfer is complete and may impose any conditions the secretary of state considers appropriate for the protection of creditors, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate bank located in Wyoming

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and subject to the jurisdiction of the courts of Wyoming. If any conditions imposed under this subsection are not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state shall, upon compliance by the applicant with subsections (a) and (b) of this section and receipt of payment under subsection (e) of this section, immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the foreign jurisdiction to which the statutory foundation is transferred.

(d) For the purposes of the laws of this state, upon issuance of a certificate of transfer, the statutory foundation shall be continued as if it had been organized under the laws of the foreign jurisdiction and shall become a statutory foundation under the laws of the foreign jurisdiction, upon issuance by such foreign jurisdiction of a certificate of registration.

(e) In addition to all other fees and impositions, a statutory foundation organized or continued under the laws of this state shall pay to the secretary of state a special fee established by rule before receiving a certificate of transfer pursuant to subsection (c) of this section.

(f) A resolution to transfer the statutory foundation to a foreign jurisdiction shall be adopted by the board of directors unless the operating agreement of the foundation provides otherwise.

(g) The statutory foundation may represent to the proper officer of the foreign jurisdiction to which the statutory foundation is transferred that the laws of this state permit such transfer, and may describe the

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authorization extended by this section as permitting the continuance or other transfer of domicile as may be required by the laws of the foreign jurisdiction, in order for the statutory foundation to be accepted in that foreign jurisdiction, provided that the statutory foundation may not misrepresent the requirements or effects of this section.

Section 2. W.S. 17-16-401(b), 17-24-101(a)(intro) and 17-28-101(b) are amended to read:

17-16-401. Corporate name.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as, or deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from the name of any profit or nonprofit corporation, trade name, limited liability company, statutory trust company, statutory foundation, limited partnership or other business entity organized, continued or domesticated under the laws of this state or licensed or registered as a foreign profit or nonprofit corporation, foreign limited partnership, foreign joint stock company, foreign statutory trust company, foreign foundation, foreign limited liability company or other foreign business entity in this state or any fictitious or reserved name.

17-24-101. Business entity name; limited rights.

(a) The authorization granted under this title by the secretary of state to file articles of incorporation, a certificate of limited partnership, articles of organization, articles of formation, a certificate of trust or other similar document authorizing the transaction of business in this

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state under a corporate, limited partnership, limited liability company, statutory trust, statutory foundation or other business entity name or to reserve a name does not:

17-28-101. Registered office and registered agent.

(b) For purposes of this chapter, "business entity" means a corporation, nonprofit corporation, limited liability company, limited partnership, cooperative marketing association, statutory trust, statutory foundation or registered limited liability partnership, whether foreign or domestic.

Section 3. There is appropriated fifty-seven thousand four hundred eighty dollars (\$57,480.00) from the general fund to the secretary of state. This appropriation shall be for the period beginning on the effective date of this act and ending June 30, 2020. This appropriation shall only be expended for the purpose of implementing the provisions of this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on July 1, 2020. This amount shall not be included in the secretary of state's standard biennial budget request.

ORIGINAL HOUSE
BILL NO. HB0236

ENGROSSED

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Section 4. This act is effective July 1, 2019.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk