

HOUSE BILL NO. HB0068

Wyoming Statutory Foundation Act-amendments.

Sponsored by: Representative(s) Greear and Olsen and
Senator(s) Cooper and Nethercott

A BILL

for

1 AN ACT relating to the Wyoming Statutory Foundation Act;
2 amending definitions; amending provisions related to
3 beneficiaries, liabilities, obligations, debts and
4 distributions under the act; making conforming amendments;
5 authorizing the issuance of units and shares of a statutory
6 foundation; repealing definitions and provisions related to
7 foundation purposes, beneficiaries and the liability of
8 protectors; and providing for an effective date.

9

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

11

12 **Section 1.** W.S. 17-30-102(a)(ii)(intro), (A), (v),
13 (viii), (x) and (xii), 17-30-103(b), 17-30-201(c)(intro)
14 and (f), 17-30-202(a), 17-30-303 by creating a new
15 subsection (e), 17-30-401(a)(i) and by creating a new

1 subsection (d), 17-30-501(c) and (e)(i), 17-30-502,
2 17-30-503(c), 17-30-505(a)(intro), 17-30-602(c), (e), (f)
3 and by creating new subsections (g) through (j),
4 17-30-701(b), 17-30-801 and 17-30-1002(b)(intro) are
5 amended to read:

6

7 **17-30-102. Definitions.**

8

9 (a) As used in this act:

10

11 (ii) "Beneficiary" means a person who is or may
12 be designated as a beneficiary in the operating agreement
13 or in accordance with the operating agreement of a
14 statutory foundation. ~~which~~ A "beneficiary" may be any one
15 (1) or more of the following:

16

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

20

21 (v) "Charitable purpose" means the relief of
22 poverty, the advancement of education or religion, the
23 promotion of a health, governmental, ~~or~~ municipal or other

1 purpose, ~~or~~ the achievement of ~~other purposes~~ which are
2 beneficial to the community;

3

4 (viii) "Financial institution" means ~~as defined~~
5 ~~in W.S. 13-1-101(a)(ix) a bank, savings and loan~~
6 association or state chartered credit union;

7

8 (x) "Founder" or "organizer" means one (1) or
9 more persons that acts under W.S. 17-30-303 to form a
10 statutory foundation. The organizer acts on behalf of the
11 founder in forming the statutory foundation and may but not
12 need be one (1) of the founders;

13

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

20

21 **17-30-103. Governing law.**

22

1 (b) The transfer of property by a founder or a
2 contributor to the statutory foundation, or any disposition
3 made subject to the terms of the operating agreement of the
4 statutory foundation, shall not ~~rendered ineffective be~~
5 void, voidable, set aside or defective in any manner for
6 any reason, including the following:

7

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

11

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

18

19 **17-30-201. Nature, purpose and duration of statutory**
20 **foundations.**

21

22 (c) Except for those purposes provided in subsection
23 (e) of this section, a statutory foundation may be created

1 for any lawful purpose, ~~which may be included in the~~
2 ~~articles of formation of the foundation, regardless of~~
3 whether the statutory foundation is for profit or for
4 charitable purposes, as defined in W.S. 17-30-102(a)(v).~~7~~
5 ~~provided that a statutory foundation shall:~~

6

7 (f) The ~~purposes for which~~ purpose of a statutory
8 foundation ~~may be created under this act~~ shall not be
9 amended or restated unless the articles of formation
10 expressly provide that the purpose of the statutory
11 foundation "may be amended,"~~7~~ "may be restated" or include
12 words of similar import or unless an amendment or
13 restatement is required pursuant to a court order.

14

15 **17-30-202. Enforcement of charitable purposes.**

16

17 (a) If the articles of formation or the operating
18 agreement of a statutory foundation formed for a charitable
19 purpose do not indicate or otherwise provide for selection
20 of a particular charitable purpose or beneficiary, or if
21 the designated charitable purpose cannot be completed or no
22 longer exists, the court may select one (1) or more
23 charitable purposes or beneficiaries. The selection shall

1 be consistent with the intent of the founder⁷ to the extent
2 that intent can be ascertained.

3

4 **17-30-303. Formation of statutory foundation;**
5 **articles of formation.**

6

7 (e) The articles of formation may be amended or
8 restated only if the articles of formation include an
9 express statement authorizing the amendment or restatement
10 of the articles of formation.

11

12 **17-30-401. Reservation to founder of power to amend,**
13 **revoke, restate or terminate.**

14

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

18

19 (i) Pursuant to W.S. 17-30-201, the power to
20 amend or restate the articles of formation of a statutory
21 foundation;

22

1 (d) A founder shall expressly reserve those powers
2 specified in paragraphs (a)(iii) and (iv) of this section
3 in the operating agreement of the statutory foundation.

4
5 **17-30-501. Board of directors.**

6
7 (c) A board of directors shall conduct the affairs of
8 the statutory foundation in accordance with the articles of
9 formation and operating agreement, ~~if any,~~ of the statutory
10 foundation, as well as this act and any other applicable
11 provision of law.

12
13 (e) An act of a director shall be retroactively valid
14 despite any defect that may be found in:

15
16 (i) The appointment of the director; or

17
18 **17-30-502. Liability of directors.**

19
20 A director is not personally liable for the acts,
21 omissions, obligations, ~~or debts~~ or other liabilities of
22 ~~the a~~ statutory foundation, whether arising in contract,
23 tort or otherwise.

1

2 **17-30-503. Protector.**

3

4 (c) Except as otherwise provided by law and by W.S.
5 17-30-501, a founder or other person may be appointed as
6 the protector of a statutory foundation.

7

8 **17-30-505. Liability of protector.**

9

10 (a) ~~Except as otherwise provided in subsection (b) of~~
11 ~~this section,~~ A protector shall not be personally liable
12 for the acts, omissions, debts, obligations or other
13 liabilities of a statutory foundation, whether arising in
14 contract, tort or otherwise. ÷

15

16 **17-30-602. Interests; units and shares.**

17

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

22

1 (e) Except to the extent otherwise provided in the
2 ~~governing instrument~~ operating agreement, the transferee of
3 the beneficial interest of a ~~beneficial owner~~ beneficiary
4 in the statutory foundation shall ~~only be entitled to~~
5 ~~receive the share of profits and the return of~~
6 ~~contributions to which the beneficial owner otherwise would~~
7 ~~be entitled. In the absence of the unanimous written~~
8 ~~consent of the owners of all other beneficial interests and~~
9 ~~of all directors of the foundation, and except to the~~
10 ~~extent otherwise provided in the governing instrument, the~~
11 ~~transferee of the beneficial interest of a beneficial owner~~
12 ~~shall have no right to participate in or be kept apprised~~
13 ~~of the affairs of the foundation or to become a beneficial~~
14 ~~owner of a beneficial interest in the foundation~~ have all
15 the rights and duties of a beneficiary of the statutory
16 foundation, except those provided in subsection (f) of this
17 section.

18
19 (f) Except to the extent otherwise provided in the
20 ~~governing instrument, at the time a beneficial owner~~
21 operating agreement, if a beneficiary of a statutory
22 foundation becomes entitled to receive a distribution, the
23 ~~owner~~ beneficiary has the status of, and is entitled to all

1 remedies available to, a creditor of the statutory
2 foundation with respect to the distribution. ~~A governing~~
3 ~~instrument~~ The operating agreement may provide for the
4 establishment of record dates with respect to allocations
5 ~~and~~ distributions by a statutory foundation.

6
7 (g) The operating agreement may authorize the
8 statutory foundation to issue units or shares having the
9 same or separate rights, powers or duties with respect to
10 specified property, payments or other interests of the
11 statutory foundation. The operating agreement may provide
12 the terms or conditions of units or shares issued by the
13 statutory foundation.

14
15 (h) A person may receive units or shares issued
16 pursuant to subsection (g) of this section without:

17
18 (i) Being or becoming a beneficiary or
19 contributor of the statutory foundation;

20
21 (ii) Acquiring any rights or duties of a
22 beneficiary of the statutory foundation; or

23

1 (iii) Making or being obligated to make a
2 contribution to the statutory foundation.

3
4 (j) No creditor of a holder of units or shares issued
5 by a statutory foundation shall have any right to obtain
6 possession of, or otherwise exercise legal or equitable
7 remedies with respect to, the property of the statutory
8 foundation.

9
10 **17-30-701. Right to information.**

11
12 (b) Upon written request by a protector, a statutory
13 foundation shall provide all information requested by the
14 protector within a reasonable time. After the death of the
15 last founder of a statutory foundation ~~or~~and if there is
16 no protector, the foundation shall provide all information
17 requested by a beneficiary within a reasonable time, upon
18 written request by a beneficiary.

19
20 **17-30-801. Creditor claim against founder.**

21
22 The property of a statutory foundation contributed by a
23 founder or a contributor, and all income, appreciation and

1 proceeds thereof, shall not be subject to the claims of a
2 founder's or a contributor's creditor, including any claims
3 for forced heirship or legitime right.

4

5 **17-30-1002. Power of court to give directions.**

6

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

14

15 **Section 2.** W.S. 17-30-102(a)(ii)(C) and (xiv),
16 17-30-201(c)(i) and (ii), 17-30-505(a)(i), (ii), (b) and
17 (c) and 17-30-602(a), (b) and (d) are repealed.

18

1 **Section 3.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

5

6

(END)