

ENROLLED ACT NO. 54, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

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

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

Section 1. W.S. 17-30-102(a)(ii)(intro), (A), (v), (viii), (x) and (xii), 17-30-103(b), 17-30-201(c)(intro) and (f), 17-30-202(a), 17-30-303 by creating a new subsection (e), 17-30-401(a)(i) and by creating a new subsection (d), 17-30-501(c) and (e)(i), 17-30-502, 17-30-503(c), 17-30-505(a)(intro), 17-30-602(c), (e), (f) and by creating new subsections (g) through (j), 17-30-701(b), 17-30-801 and 17-30-1002(b)(intro) are amended to read:

17-30-102. Definitions.

(a) As used in this act:

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

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

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

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

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

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

17-30-103. Governing law.

(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 statutory foundation, shall not ~~rendered ineffective be void, voidable, set aside or defective in any manner~~ for any reason, including the following:

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

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(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 statutory foundation, avoids or defeats any forced heirship or legitime right, claim or interest under the law of a foreign jurisdiction.

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

(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 statutory foundation is for profit or for charitable purposes, as defined in W.S. 17-30-102(a)(v). ~~provided that a statutory foundation shall:~~

(f) The ~~purposes for which~~ purpose of 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 unless 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

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charitable purposes or beneficiaries. The selection shall be consistent with the intent of the founder, to the extent that intent can be ascertained.

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

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

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

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

17-30-501. Board of directors.

(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 statutory foundation, as well as this act and any other applicable provision of law.

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

(i) The appointment of the director; or

17-30-502. Liability of directors.

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

17-30-503. Protector.

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

17-30-505. Liability of protector.

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

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

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

(e) Except to the extent otherwise provided in the ~~governing instrument~~ operating agreement, the transferee of

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the beneficial interest of a ~~beneficial owner~~ beneficiary 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~~ have all the rights and duties of a beneficiary of the statutory foundation, except those provided in subsection (f) of this section.

(f) ~~Except to the extent otherwise provided in the governing instrument, at the time a beneficial owner operating agreement, if a beneficiary of a statutory foundation~~ becomes entitled to receive a distribution, the ~~owner~~ beneficiary 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~~ The operating agreement may provide for the establishment of record dates with respect to ~~allocations and~~ distributions by a statutory foundation.

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

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

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

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

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

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

17-30-701. Right to information.

(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~~ and 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.

17-30-801. Creditor claim against founder.

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

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

(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 of formation in accordance with the probable intent of the founder, ~~based on one (1) of~~ and subject to the following: ~~grounds:~~

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

ORIGINAL HOUSE
BILL NO. HB0068

ENGROSSED

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

(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