CHAPTER 210
SB 312 - FINAL VERSION

26Apr2018... 1572h

2018 SESSION

18-2733
01/04

SENATE BILL ***312***

AN ACT **clarifying the New Hampshire Foundation Act.**

SPONSORS: **Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Rep. Hunt, Ches. 11**

COMMITTEE: **Commerce**

ANALYSIS

This bill clarifies the New Hampshire Foundation Act.

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Explanation: **Matter added to current law appears in *bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 210
SB 312 - FINAL VERSION

26Apr2018... 1572h **18-2733**
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT clarifying the New Hampshire Foundation Act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

210:1 New Hampshire Foundation Act; Definitions. Amend RSA 564-F:2-201(s)-(x) to read as follows:

(s) *"Principal office" means the office where a foundation's principal executive offices are located. A foundation's principal office may be located in or outside this state.*

***(t)* "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest in anything that may be the subject of ownership.**

[~~(t)~~] *(u)* "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) Is a distributee or permissible distributee of the foundation's property;

(2) Would be a distributee or permissible distributee of the foundation's property if the interests of the distributees described in subsection [~~(t)~~] *(u)*(1) terminated on that date but the termination of those interests would not cause the foundation to dissolve; or

(3) Would be a distributee or permissible distributee of the foundation's property if the foundation dissolved on that date.

[~~(u)~~] *(v)* "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.

[~~(v)~~] *(w)* "Registered foreign foundation" means a foreign foundation that is registered under RSA 564-F:21-2102.

[~~(w)~~] *(x)* "Registrable activity" is defined in RSA 564-F:21-2101(b).

[~~(x)~~] *(y)* "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. The term "state" includes an Indian tribe or band that is recognized by federal law or formally acknowledged by a state.

210:2 New Hampshire Foundation Act; General Powers. Amend RSA 564-F:8-801(d) to read as follows:

(d) In a judicial proceeding under subsection (c)(1)[~~(A)~~], the court may:

(1) Enjoin or set aside the act if:

(A) It is equitable to do so; and

(B) All of the affected persons are parties to the proceeding; ***and***

(2) Award damages for loss suffered by the foundation or another party because of enjoining the unauthorized act.

210:3 New Hampshire Foundation Act; Capital. Amend RSA 564-F:9-901(c) to read as follows:

(c) ***Subject to RSA 564-F:7-702(b),*** a founder shall not have any right, power, or interest in a foundation solely by reason of contributing property to the foundation.

210:4 New Hampshire Foundation Act; Definitions. Amend RSA 564-F:2-201(d) to read as follows:

(d) "Bylaws" means the bylaws adopted under RSA 564-F:7-701, as may be amended or restated in accordance with RSA [~~564-F:7-702~~] ***564-F:7-703***.

210:5 New Hampshire Foundation Act; Name. Amend RSA 564-F:4-401(g) to read as follows:

(g) Any undertaking under subsection (e)[~~(4)~~] ***(3)*** must be made in a form satisfactory to the secretary of state and must be filed with the secretary of state.

210:6 New Hampshire Foundation Act; Appointment and Term. Amend RSA 564-F:10-1005(c)(1) to read as follows:

(1) In the case of a director who is an individual, the director's ***incapacity,*** death, resignation, or removal; or

210:7 New Hampshire Foundation Act; Appointment and Term. Amend RSA 564-F:12-1205(c)(2) to read as follows:

(2) In the case of protector who is an individual, the protector's ***incapacity or*** death; or

210:8 New Hampshire Foundation Act; Removal. Amend RSA 564-F:12-1207(b)(2) to read as follows:

(2) Lack of cooperation among the protectors substantially impairs ***the performance of the protector's duties or*** the management of the foundation's affairs;

210:9 New Hampshire Foundation Act; Duty of Loyalty. Amend RSA 564-F:13-1302(a) to read as follows:

(a) Unless the governing documents provide otherwise, a protector has a duty to [~~manage the foundation and its property~~] ***exercise his, her, or its powers*** solely in the interests of the foundation's purposes and the beneficiaries' interests.

210:10 New Hampshire Foundation Act; Duty of Impartiality. Amend RSA 564-F:13-1303 to read as follows:

564-F:13-1303 Duty of Impartiality. Unless the governing documents provide otherwise, if a foundation has two or more beneficiaries, then the protector has a duty to

act impartially in [~~managing the foundation and its property~~] ***exercising his, her, or its powers***, giving due regard to the foundation's purposes and the beneficiaries' interests.

210:11 New Hampshire Foundation Act; Representatives. Amend RSA 564-F:14-1402(a)(6)(B) to read as follows:

(B) A guardian of the [~~estate~~] ***person*** under subsection (a)(2)(B).

210:12 New Hampshire Foundation Act; Representatives. Amend RSA 564-F:14-1402(a)(7)(C) to read as follows:

(C) A guardian of the [~~estate~~] ***person*** under subsection (a)(2)(B).

210:13 New Hampshire Foundation Act; Representatives. Amend RSA 564-F:14-1402(d)(3) to read as follows:

(3) With respect to any matter that is the subject of [~~the trust~~] ***a*** dispute ***involving the foundation or its affairs***, there is a conflict of interest among the persons whom the representative is appointed to represent.

210:14 New Hampshire Foundation Act; Enforcement of No-Contest Provision. Amend RSA 564-F:14-1404(d)(4) to read as follows:

(4) To the extent that the foundation is a charitable trust, any judicial proceeding brought by the director of charitable trusts for the interpretation or construction [~~or interpretation~~] of the foundation's governing documents.

210:15 New Hampshire Foundation Act; Rights of a Beneficiary's Creditors and Assignees. Amend the introductory paragraph of RSA 564-F:15-1503(d) to read as follows:

(d) A beneficiary's creditor or assignee may not compel a beneficiary to exercise any right or power that, in any fiduciary or nonfiduciary capacity, the beneficiary has under the [~~terms of the trust~~] ***governing documents***, including any of the following:

210:16 New Hampshire Foundation Act; Nonjudicial Settlement Agreement. Amend RSA 564-F:16-1606(a)(2) to read as follows:

(2) A [~~trust~~] ***foundation*** official;

210:17 New Hampshire Foundation Act; Limitation of Action Against a Foundation Official. Amend RSA 564-F:18-1805(a)(2) to read as follows:

(2) Except as provided in subsection (a)(3), 3 years after the earliest of:

(A) The foundation official's removal, resignation, or death;

(B) The termination of the beneficiary's interest; [~~or~~]

(C) The foundation's dissolution[~~.~~

~~(D)~~] ***or***

(3) If the act or omission was not discovered and could not reasonably have been discovered at the time of the act or omission, one year after the earlier of:

[~~(i)~~] *(A)* The discovery of the act or omission; or

[~~(ii)~~] *(B)* In the exercise of reasonable diligence, the date on which the act or omission should have been discovered.

210:18 New Hampshire Foundation Act; Administration Cancellation. Amend the section heading of RSA 564-F:21-2116 to read as follows:

564-F:21-2116 [~~Administration~~] *Administrative* Cancellation.

210:19 Effective Date. This act shall take effect upon its passage.

Approved: June 08, 2018
Effective Date: June 08, 2018