

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 146

FINAL READING

Introduced by Hansen, M., 26.

Read first time January 11, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Uniform Power of Attorney Act;
- 2 to amend section 30-4020, Reissue Revised Statutes of Nebraska; to
- 3 change liability provisions for refusal to accept an acknowledged
- 4 power of attorney; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-4020, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-4020 (1) Except as otherwise provided in subsection (2) of this
4 section:

5 (a) A person shall either accept an acknowledged power of attorney
6 or request a certification, a translation, or an opinion of counsel under
7 subsection (4) of section 30-4019 no later than seven business days after
8 presentation of the power of attorney for acceptance;

9 (b) If a person requests a certification, a translation, or an
10 opinion of counsel under subsection (4) of section 30-4019, the person
11 shall accept the power of attorney no later than five business days after
12 receipt of the certification, translation, or opinion of counsel; and

13 (c) A person may not require an additional or different form of
14 power of attorney for authority granted in the power of attorney
15 presented.

16 (2) A person is not required to accept an acknowledged power of
17 attorney if:

18 (a) The person is not otherwise required to engage in a transaction
19 with the principal in the same circumstances;

20 (b) Engaging in a transaction with the agent or the principal in the
21 same circumstances would be inconsistent with state or federal law;

22 (c) The person has actual knowledge of the termination of the
23 agent's authority or of the power of attorney before exercise of the
24 power;

25 (d) A request for a certification, a translation, or an opinion of
26 counsel under subsection (4) of section 30-4019 is refused;

27 (e) The person in good faith believes that the power is not valid or
28 that the agent does not have the authority to perform the act requested,
29 whether or not a certification, a translation, or an opinion of counsel
30 under subsection (4) of section 30-4019 has been requested or provided;

31 (f) The person makes, or has actual knowledge that another person

1 has made, a report to the local adult protective services office stating
2 a good faith belief that the principal may be subject to physical or
3 financial abuse, neglect, exploitation, or abandonment by the agent or a
4 person acting for or with the agent;

5 (g) The person brought, or has actual knowledge that another person
6 has brought, a judicial proceeding for construction of a power of
7 attorney or review of the agent's conduct; or

8 (h) The power of attorney becomes effective upon the occurrence of
9 an event or contingency, and neither a certification nor evidence of the
10 occurrence of the event or contingency is presented to the person being
11 asked to accept the power of attorney.

12 (3) A person may not refuse to accept an acknowledged power of
13 attorney if any of the following applies:

14 (a) The person's reason for refusal is based exclusively upon the
15 date the power of attorney was executed; or

16 (b) The person's refusal is based exclusively on a mandate that an
17 additional or different power of attorney form must be used.

18 (4)(a) (4) A person may bring an action or proceeding to mandate the
19 acceptance of that refuses in violation of this section to accept an
20 acknowledged power of attorney.

21 (b) In any action or proceeding to mandate the acceptance of an
22 acknowledged power of attorney or confirm the validity of an acknowledged
23 power of attorney, a person found liable for refusing to accept such
24 power of attorney is subject to:

25 (i) Liability to the principal and to the principal's heirs,
26 assigns, and personal representative of the estate of the principal in
27 the same manner as the person would be liable had the person refused to
28 accept the authority of the principal to act on the principal's own
29 behalf;

30 (ii) (a) A court order mandating acceptance of the power of
31 attorney; and

1 (iii) (b) Liability for reasonable attorney's fees and costs
2 incurred in such any action or proceeding that confirms the validity of
3 the power of attorney or mandates acceptance of the power of attorney.

4 (c) In any action or proceeding in which a person's refusal to
5 accept an acknowledged power of attorney in violation of this section
6 prevents an agent from completing a transaction requested by the agent
7 with respect to a security account as defined in section 30-2734, owned
8 by the principal, such person, in addition to being subject to the
9 provisions of subdivision (4)(b) of this section, is subject to:

10 (i) Economic damages of the principal proximately caused by the
11 person's refusal to accept the acknowledged power of attorney and failure
12 to comply with the instructions of the agent designated in such power of
13 attorney with respect to such security account; and

14 (ii) Reasonable attorney's fees and costs incurred to seek damages
15 resulting from such person's refusal to accept the acknowledged power of
16 attorney and failure to comply with the instructions of such agent
17 designated in the power of attorney with respect to the security account.

18 Sec. 2. Original section 30-4020, Reissue Revised Statutes of
19 Nebraska, is repealed.