

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 146

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 time for acceptance of a power of attorney; and to repeal the
- 4 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 that refuses in violation of this section to
19 accept an acknowledged power of attorney as provided in subsection (1) of
20 this section is liable to the principal and to the principal's heirs,
21 assigns, and personal representative of the estate of the principal in
22 the same manner as the person would be liable had the person refused to
23 accept the authority of the principal to act on the principal's own
24 behalf. In any action brought in court to either force the acceptance of
25 the authority of the attorney in fact or pursue damages as a result of
26 the person's refusal to accept the authority of an attorney in fact, the
27 person found liable for refusing to accept the authority of an attorney
28 in fact is subject to:

29 (i) (a) A court order mandating acceptance of the power of attorney;
30 and

31 (ii) (b) Liability for: reasonable attorney's fees and costs

1 ~~incurred in any action or proceeding that confirms the validity of the~~
2 ~~power of attorney or mandates acceptance of the power of attorney.~~

3 (A) Economic damages of the principal proximately caused by the
4 person's refusal to comply with the instructions of the agent designated
5 in the power of attorney;

6 (B) Reasonable attorney's fees and costs incurred by the prevailing
7 party in the action to force the acceptance of the authority of the
8 attorney in fact or to seek damages resulting from the refusal of the
9 authority of the attorney in fact; and

10 (C) Prejudgment interest on the actual damages from the date the
11 person refused to accept the authority of the attorney in fact.

12 (b) Nothing in this subsection shall be construed to limit other
13 remedies available under law.

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15 Nebraska, is repealed.