

LEGISLATIVE BILL 146

Approved by the Governor March 07, 2019

Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to the Nebraska Uniform Power of Attorney Act; to amend section 30-4020, Reissue Revised Statutes of Nebraska; to change liability provisions for refusal to accept an acknowledged power of attorney; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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