

AMENDMENTS TO LB146

Introduced by Hansen, M., 26.

1           1. Strike original section 1 and insert the following new section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(i) Liability to the principal and to the principal's heirs,~~  
31 ~~assigns, and personal representative of the estate of the principal in~~

1 the same manner as the person would be liable had the person refused to  
2 accept the authority of the principal to act on the principal's own  
3 behalf;

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

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

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

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

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