

AN ACT

ENTITLED, An Act to prohibit the abuse of certain elderly persons and to revise certain provisions regarding the abuse of disabled adults.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 22-46-1 be amended to read as follows:

22-46-1. Terms used in this chapter mean:

- (1) "Abuse," physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or a disabled adult;
- (2) "Disabled adult," a person eighteen years of age or older who suffers from a condition of mental retardation, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care;
- (3) "Elder," a person sixty-five years of age or older;
- (4) "Exploitation," the wrongful taking or exercising of control over property of an elder or a disabled adult with intent to defraud the elder or disabled adult; and
- (5) "Neglect," harm to an elder's or a disabled adult's health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the elder's or disabled adult's health or welfare, within the means available for the elder or disabled adult, including the failure to provide adequate food, clothing, shelter, or medical care.

Section 2. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, neglect, does not include a decision that is made to not seek medical care for an elder or disabled adult upon the expressed desire of the elder or disabled

adult; a decision to not seek medical care for an elder or disabled adult based upon a previously executed declaration, do-not-resuscitate order, or a power of attorney for health care; a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law; or the failure to provide goods and services outside the means available for the elder or disabled adult.

Section 3. That § 22-46-2 be amended to read as follows:

22-46-2. Any person who abuses or neglects an elder or a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony.

Section 4. That § 22-46-3 be amended to read as follows:

22-46-3. Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or a disabled adult, and having been entrusted with the property of that elder or disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A.

Section 5. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

A report of abuse, neglect, or exploitation under this chapter may be made orally or in writing to the state's attorney of the county in which the elder or disabled adult resides or is present, to the Department of Social Services, or to the law enforcement officer. The state's attorney or law enforcement officer, upon receiving a report, shall immediately notify the Department of Social Services.

Section 6. That § 34-12-51 be amended to read as follows:

34-12-51. Any institution regulated pursuant to chapter 34-12 and any employee, agent, or member of a medical or dental staff thereof who, in good faith, makes a report of abuse, exploitation, or neglect of any elder or disabled adult, is immune from any liability, civil or criminal, that might

otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the report. This immunity extends in a like manner to any public official involved in the investigation of abuse, exploitation, or neglect of any elder or disabled adult, or to any person or institution who in good faith cooperates with any public officials in an investigation. The provisions of this section do not extend to any person alleged to have committed any act of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any such act.

Section 7. That chapter 22-46 be amended by adding thereto a NEW SECTION to read as follows:

Any person who, in good faith, makes a report of abuse, neglect, or exploitation of any elder or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the report. This immunity extends in a like manner to any public official involved in the investigation of abuse, neglect, or exploitation of any elder or disabled adult, or to any person or institution who in good faith cooperates with any public official in an investigation. The provisions of this section do not extend to any person alleged to have committed any act of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any such act.

An Act to prohibit the abuse of certain elderly persons and to revise certain provisions regarding the abuse of disabled adults.

=====

I certify that the attached Act originated in the

SENATE as Bill No. 193

Secretary of the Senate

=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 193
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State