

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

555N0054

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1006** - 01/16/2007

Introduced by: The Committee on Local Government at the request of the Office of the
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain procedures regarding the election process.

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

3 Section 1. That § 12-6-56 be amended to read as follows:

4 12-6-56. If a vacancy occurs by reason of death or withdrawal after a primary election, a
5 party candidate for public office may be replaced by a new nominee if a meeting of the
6 appropriate party central committee ~~can be~~ is held and the results are certified to the appropriate
7 official within the times prescribed by § 12-8-6. ~~Such a~~ If the vacancy, if is a party candidate for
8 presidential elector or statewide office, the vacancy shall be filled by the State Party Central
9 Committee. ~~Such a~~ If the vacancy, if for is a party candidate for public office other than
10 presidential elector or statewide office, the vacancy shall be filled by a vote of ~~all interested~~
11 county party central committee members. ~~If any part of a county lies within the geographic~~
12 ~~boundaries of such office, the party county central committee shall be deemed interested, and~~
13 ~~the central committee members from within the county, residing in attendance who reside in the~~
14 affected district, ~~may vote to fill the vacancy. In multi-county districts, all county central~~
15 ~~committee members may vote to fill the vacancy.~~



1 Section 2. That § 12-7-7 be amended to read as follows:

2 12-7-7. Any candidate for President or Vice President of the United States who is not
3 nominated by a primary election may be nominated by filing with the secretary of state ~~or county~~
4 ~~auditor as prescribed by § 12-6-4~~, not prior to January ~~twentieth~~ first at eight a.m. and not later
5 than the first Tuesday in August at five p.m. prior to the election, a certificate of nomination
6 which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed
7 by registered mail by the first Tuesday in August at five p.m. prior to the election, it is timely
8 submitted. The certificate shall ~~specify that an independent candidate for President or Vice~~
9 ~~President shall~~ designate the name of ~~any~~ the national political party, or political party organized
10 pursuant to chapter 12-5, with which the ~~candidate has~~ candidate's electors have an affiliation.
11 If no affiliation exists, the ~~candidate~~ electors shall be designated by the term, no party. The
12 number of signatures required may not be less than one percent of the total combined vote cast
13 for Governor at the last certified gubernatorial election within the state. An independent
14 candidate for President shall file a declaration of candidacy and a certification of the candidate's
15 selection for Vice President with the secretary of state prior to circulation of the candidate's
16 nominating petitions. The candidate and the candidate's selection for Vice President shall sign
17 the certification before it is filed. The State Board of Elections shall promulgate rules pursuant
18 to chapter 1-26 prescribing the forms for the certificate of nomination and the certification for
19 Vice President.

20 Section 3. That § 12-17B-11 be amended to read as follows:

21 12-17B-11. Except for any specially trained technicians representing the equipment vendor
22 and required for the operation of the automatic tabulating equipment, there shall be equal
23 representation from each political party having a candidate on the ballot and whose candidate
24 on the county-wide ballot at the last general election received at least fifteen percent of the votes

1 amongst those employed or authorized to receive, process, or tabulate the ballots. The proposed
2 list of employees shall be submitted to each county party chairperson for approval at least thirty
3 days prior to the election. ~~If the chairperson fails to notify the person in charge of the election~~
4 ~~of any disapproval of any proposed employee at least twenty days prior to the election, the list~~
5 ~~is deemed approved.~~ Each person shall, prior to discharging any duties, take and subscribe to
6 an oath as prescribed by the State Board of Elections.

7 Section 4. That § 12-19-3 be amended to read as follows:

8 12-19-3. Upon receiving an application for absentee ballots, the person in charge of an
9 election shall, within forty-eight hours, or if ballots are not then on hand, then within forty-eight
10 hours after receipt of the ballots, after confirming from the master registration file that the
11 applicant is registered as a voter pursuant to chapter 12-4, enclose one of each of the official
12 ballots, a set of instructions on absentee balloting, and an unsealed return envelope. All of the
13 enclosures shall be sealed in an envelope addressed to the applicant at the place stated in the
14 application. If a registration form is received simultaneous with an absentee ballot request and
15 prior to the registration deadline, the absentee ballot provided shall be based on the submitted
16 registration form.

17 Section 5. That § 34-11A-29 be amended to read as follows:

18 34-11A-29. A regular meeting of the registered voters who are residing within the
19 boundaries of a district shall be held in the first quarter of each calendar year and special
20 meetings may be called by the board of directors at any time. The annual election shall be
21 conducted during the regular meeting consistent with the provisions of chapter 8-3. Notice of
22 the annual election shall be given by the secretary-treasurer by one publication in a legal
23 newspaper of general circulation in each county in which the district is situated. The meeting
24 shall be held not less than seven days nor more than fourteen days after the date of publication

1 of the notice.

2 Section 6. That § 34-31A-43 be amended to read as follows:

3 34-31A-43. A regular meeting of the electors who are owners of any interest in real property
4 assessed for taxation in the district and who are residing within the boundaries of a district shall
5 be held in the first quarter of each calendar year and special meetings may be called by the board
6 of directors at any time. The annual election shall be conducted during the regular meeting
7 consistent with the provisions of chapter 8-3. Notice of the annual election shall be given by the
8 secretary-treasurer by one publication in a legal newspaper of general circulation in each county
9 in which the district is situated. The meeting shall be held not less than seven days nor more
10 than fourteen days after the date of publication of the notice.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0205

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1010** - 02/02/2007

Introduced by: The Committee on Appropriations at the request of the Department of
Military and Veterans Affairs

1 FOR AN ACT ENTITLED, An Act to make an appropriation to provide for the renovation of
2 the nursing care building on the South Dakota Veterans' Home campus and to declare an
3 emergency.

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

5 Section 1. There is hereby appropriated from the state general fund the sum of one million
6 eighty-two thousand seven hundred eighty-three dollars (\$1,082,783), and one million eight
7 hundred seven thousand five hundred twenty-six dollars (\$1,807,526) in federal fund
8 expenditure authority, or so much thereof as may be necessary, to the Department of Military
9 and Veterans Affairs for the purposes of renovation of the nursing care building on the South
10 Dakota Veterans' Home campus in Hot Springs to include the installation of fire retardant doors,
11 a fire pump, and a sprinkler control system, the replacement of fire escapes on the building
12 exterior, and the upgrade of the nurse call system.

13 Section 2. The secretary of the Department of Military and Veterans Affairs shall approve
14 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

15 Section 3. Whereas, this Act is necessary for the support of the state government and its



- 1 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
- 2 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0295

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 25** - 02/02/2007

Introduced by: The Committee on State Affairs at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain requirements regarding the ability of the
2 Public Utilities Commission to regulate the sale or other disposition of the property, plant,
3 business, or stock of electric or gas public utilities.

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

5 Section 1. That § 49-34A-35 be amended to read as follows:

6 49-34A-35. ~~No public utility shall sell, lease or otherwise dispose of its property or business~~
7 ~~constituting an operating unit or system in this state to another public utility or purchase the~~
8 ~~property or business constituting an operating unit or system in this state to another public utility~~
9 ~~or merge or consolidate with another public utility operating in this state, without first being~~
10 ~~authorized to do so by the Public Utilities Commission; provided, that in the event such sale,~~
11 ~~lease or other disposition of the property or business of one public utility to another public~~
12 ~~utility does not involve a sale, lease or disposition wherein the actual consideration exceeds two~~
13 ~~hundred thousand dollars, such sale, lease or disposition shall not be subject to the provisions~~
14 ~~of this section~~ No public utility, without first being authorized to do so by the commission, may:

15 (1) Sell, lease, or otherwise dispose of its property or business constituting an operating



1 unit or system in this state to another person;

2 (2) Sell, lease, or otherwise dispose of its operating property or plant used to provide gas
3 or electric service to its customers in this state to another person;

4 (3) Purchase the property or business constituting an operating unit or system in this state
5 of another public utility; or

6 (4) Merge or consolidate with another public utility operating in this state.

7 However, if the sale, lease, merger, consolidation, or other disposition of the property or
8 business of one public utility to another person, as provided in subdivisions (1) to (4), inclusive,
9 does not involve a sale, lease, merger, consolidation, or disposition wherein the fair market
10 value exceeds ten million dollars, the sale, lease, merger, consolidation, or disposition is not
11 subject to the restrictions of this section.

12 No person may acquire or gain control either directly or indirectly of any public utility doing
13 business in this state that has a fair market value exceeding ten million dollars without the
14 commission's prior authorization. As used in this section, the term, control, means the right to
15 direct or cause the direction of the management and policies of the public utility, whether
16 through the ownership of voting securities, by contract, or otherwise.

17 Section 2. That § 49-34A-36 be amended to read as follows:

18 49-34A-36. Upon the filing of an application for the approval ~~and consent~~ of the ~~Public~~
19 ~~Utilities Commission~~ commission to an action described in § 49-34A-35, the commission shall
20 investigate the ~~same~~ application, with or without public hearing, and in case of a public hearing,
21 upon such notice as the commission may require, ~~and if it shall find that the proposed action is~~
22 ~~consistent with the public interests it shall give its consent and approval in writing. In reaching~~
23 ~~its determination, the commission shall take into consideration the reasonable value of the~~
24 ~~property, plant, equipment or securities to be acquired or disposed of or merged and~~

1 ~~consolidated. The commission shall act on the application within one hundred eighty days and~~
2 ~~shall approve the proposed action unless the commission finds that there is a likelihood of~~
3 ~~significant adverse impacts to customers in this state.~~

4 Section 3. That § 49-34A-37 be amended to read as follows:

5 49-34A-37. No public utility subject to the jurisdiction of the ~~Public Utilities Commission~~
6 commission may purchase voting stock in another public utility doing business in South Dakota
7 without first having made application to and received the ~~consent~~ approval of the commission
8 ~~in writing or by order within the time and in the manner provide in section 2 of this Act.~~ An
9 intentional violation of this section is a petty offense. After the first judgment, each day's
10 violation is a separate offense.

11 Section 4. That § 49-34A-38 be repealed.

12 ~~—49-34A-38. The provisions of §§ 49-34A-35 to 49-34A-37, inclusive, shall not apply to any~~
13 ~~transaction which is subject to the jurisdiction of a federal agency or authority.~~

14 Section 5. That § 49-34A-38.1 be repealed.

15 ~~—49-34A-38.1. Notwithstanding the provisions of §§ 49-34A-35 to 49-34A-38, inclusive, no~~
16 ~~person may acquire or control either directly or indirectly more than ten percent of the total~~
17 ~~capital stock of any public utility organized and doing business in this state or of any public~~
18 ~~utility organized under the laws of any other state receiving more than twenty-five percent of~~
19 ~~its gross revenue in this state without first securing authorization to do so from the Public~~
20 ~~Utilities Commission. Any such acquisition or control without the commission's prior~~
21 ~~authorization is void.~~

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

400N0266 SENATE COMMERCE COMMITTEE ENGROSSED NO.
SB 43 - 02/01/2007

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for the registration of tobacco retailers.

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

3 Section 1. That § 10-50-9 be amended to read as follows:

4 10-50-9. Each person, except a retailer, engaging in the business of selling cigarettes or
5 tobacco products in this state, including any distributor or wholesaler, shall secure a license
6 therefore from the secretary of revenue and regulation. A separate application and license is
7 required for each wholesale outlet ~~when~~ if a person owns or controls more than one place of
8 business dealing in cigarettes or tobacco products. Each person selling cigarettes or tobacco
9 products at retail shall register with the Department of Revenue and Regulation. A separate
10 registration is required for each retail outlet operated within the state. No fee may be charged
11 for this registration.

12 Any person, except a retailer, who sells, offers for sale, or possesses with intent to sell, any
13 cigarettes or tobacco products, without a license or registration commits a petty offense.

14 Section 2. That § 10-50-13 be amended to read as follows:

15 10-50-13. Any license granted under this chapter may be transferred to a new location or to



1 another person. ~~Where~~ If the transfer is to another person, the licensee ~~must~~ shall show in
2 writing, under oath, that ~~he~~ the licensee has made a bulk sale of the business operated under
3 ~~such the~~ license, ~~and the~~. The transferee ~~must~~ shall make an application exactly as if an original
4 applicant, setting forth therein that ~~he~~ the transferee is the bulk sale purchaser of the business
5 operated under ~~such the~~ license and requesting that ~~such the~~ license be transferred to him or her.
6 If the transfer is to a new location, the licensee ~~must~~ shall make application showing all the
7 relevant facts as to ~~such the~~ new location, ~~which~~. The application shall take the same course and
8 be acted upon as if an original application. ~~In case of any transfer of any license affected by this~~
9 ~~chapter, a fee of two dollars and fifty cents shall be required to continue the unexpired portion~~
10 ~~of such license.~~

11 Section 3. That § 10-50-15 be amended to read as follows:

12 10-50-15. The secretary of revenue and regulation may revoke the license of any distributor
13 or wholesaler or the registration of a dealer for failure to comply with any of the provisions of
14 this chapter. Any person aggrieved by ~~such the~~ revocation may apply to the secretary for a
15 hearing as provided in § 10-50-46 and may further appeal to the court as provided in § 10-50-49.

16 Section 4. That § 10-50-32 be amended to read as follows:

17 10-50-32. No person, other than a ~~person licensed pursuant to § 10-50-9~~ licensed distributor,
18 may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or
19 cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do
20 not bear stamps or an imprint impressed by a suitable metering machine approved by the
21 secretary as provided by this chapter, evidencing the payment of the tax imposed by this chapter.

22 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class
23 6 felony.

24 Section 5. That § 10-50-41 be amended to read as follows:

1 10-50-41. The secretary of revenue and regulation may examine the books, papers, and
2 records of any distributor, wholesaler, or dealer in this state, for the purpose of determining
3 whether the tax imposed by this chapter has been fully paid, and may investigate and examine
4 the stock of cigarettes or tobacco products in or upon any premises where ~~such~~ the cigarettes or
5 tobacco products are possessed, stored, or sold, for the purpose of determining whether the
6 provisions of this chapter are being obeyed. The secretary may make ~~such~~ the inspections and
7 examinations at any time during ordinary business hours, and may inspect at ~~such~~ the times the
8 premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon ~~such~~
9 the premises for the purpose of ascertaining whether cigarettes or tobacco products are held or
10 possessed in violation of this chapter. Each dealer shall keep documents establishing that the
11 cigarettes and tobacco products in the dealer's inventory were purchased from a distributor or
12 wholesaler licensed by the State of South Dakota. The documents shall be kept for at least three
13 months. If the documents are not stored at the dealer's registered location, the documents shall
14 be made available in physical or electronic form to the secretary within five business days of the
15 receipt of the request from the secretary.

16 Section 6. That § 10-50-62 be amended to read as follows:

17 10-50-62. Tobacco products may be sold by licensed distributors and licensed wholesalers
18 only to dealers. ~~Dealers who buy or receive tobacco products from persons other than licensed~~
19 ~~distributors or licensed wholesalers must pay the tax imposed in § 10-50-61. However, the~~
20 ~~dealer may elect to report and remit the tax on the cost price of the tobacco products to the~~
21 ~~dealer rather than on the wholesale purchase price. Tobacco dealers may purchase tobacco~~
22 products only from licensed wholesalers and distributors. A violation of this section is a Class
23 2 misdemeanor.

24 Section 7. That § 10-50-93 be amended to read as follows:

1 10-50-93. No person may make a delivery sale of cigarettes to any ~~individual~~ person who
2 is under the legal minimum purchase age in the state.

3 Any person accepting a purchase order for a delivery sale shall comply with:

- 4 (1) The age verification requirements provided in § 10-50-94;
- 5 (2) The disclosure requirements provided in § 10-50-95;
- 6 (3) The shipping requirements provided in § 10-50-96;
- 7 (4) The registration and reporting requirements provided in § 10-50-97; ~~and~~
- 8 (5) All other statutes of the state generally applicable to sales of cigarettes that occur
9 entirely within the state, and any law imposing an excise tax, sales tax, license,
10 revenue-stamping requirement, and escrow payment obligation as provided in chapter
11 10-50B; and
- 12 (6) The registration requirements in § 10-50-9.

13 Section 8. That § 10-50-16 be amended to read as follows:

14 10-50-16. Any person who sells any cigarettes or tobacco products after such person's
15 license or registration has been revoked commits a petty offense, and all cigarettes or tobacco
16 products in such person's possession shall be seized and forfeited to the state pursuant to chapter
17 23A-37.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

824N0518

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 125 - 02/02/2007

Introduced by: Senators Napoli, Gray, Greenfield, Hundstad, Koetzle, Maher, McCracken, McNenny, Olson (Ed), Peterson (Jim), and Schmidt (Dennis) and Representatives Hunt, Brunner, Dennert, Dykstra, Gillespie, Koistinen, Moore, Novstrup (Al), Rave, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to allow an abandoned mobile home or manufactured home
2 to be moved under certain conditions and to require property taxes to be abated on certain
3 abandoned mobile homes and manufactured homes.

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

5 Section 1. If a mobile home or manufactured home as defined in chapter 32-7A has been
6 abandoned and left on leased real property, the owner of real property may sell the mobile home
7 or manufactured home under the provisions of chapter 21-54. A mobile home or manufactured
8 home is considered abandoned if the owner of the mobile home or manufactured home has not
9 removed the home from the real property owner's land within thirty days of the court issuing a
10 notice to quit as provided in chapter 21-16. Upon issuance of the notice to quit by the court, the
11 owner of real property shall give the owner of the mobile home or manufactured home and any
12 lienholder with a lien properly noted pursuant to chapter 32-3, written notice of intent to sell the
13 home pursuant to chapter 21-54 if the home is not removed from the real property owner's
14 property within thirty days. The notice shall be sent to the owner of the mobile home or



1 manufactured home at the owner's last known address. The Department of Revenue and
2 Regulation shall promulgate rules pursuant to chapter 1-26 to prescribe a form for the written
3 notice. Any written notice shall be sent by certified mail. The sale is subject to any taxes owed
4 on the home and unpaid lot rent but such unpaid lot rent lien may not exceed two month's lot
5 rent at the price previously agreed to by the owner of real property and owner of the mobile
6 home or manufactured home.

7 Section 2. After the owner of the abandoned mobile home or manufactured home has been
8 provided thirty days written notice, and before the owner of real property proceeds with the sale
9 of the abandoned mobile home or manufactured home, the owner of the real property shall
10 provide written notice of intent to sell the abandoned property to the county treasurer where the
11 home is located. The Department of Revenue and Regulation shall promulgate rules pursuant
12 to chapter 1-26 to prescribe a form for the written notice. If the treasurer has not issued a distress
13 warrant and informed the owner of real property of such issuance within thirty days of the notice
14 required by this section or the mobile home or manufactured home has not been removed by its
15 owner or any lien holder within thirty days of the notice provided by section 1 of this Act, the
16 owner of real property may proceed with the sale pursuant to chapter 21-54.

17 Section 3. If an abandoned mobile home or manufactured home fails to sell at a sale held
18 pursuant to chapter 21-54, title to the mobile home or manufactured home is irrevocably vested
19 with the owner of the real property. The owner of the real property on which the mobile home
20 or manufactured home resides, may obtain an abandoned title without payment or obligation to
21 pay any taxes owed on the home or any lien on the home at the time of acquisition. However,
22 if the owner of the real property intends any use of the abandoned mobile home or manufactured
23 home other than disposal, the owner of the real property may obtain an abandoned title after
24 paying any taxes owed on the home. The department shall promulgate rules pursuant to chapter

1 1-26 to prescribe a form that shall be used to apply for the abandoned title.

2 Section 4. If an owner of the real property obtains a title to a mobile home or manufactured
3 home pursuant to section 3 of this Act, the owner of the real property shall obtain a permit
4 pursuant to § 32-5-16.3 to move the abandoned mobile home or manufactured home. If the
5 owner of the real property files an affidavit with the county treasurer stating that the owner is
6 going to move the abandoned mobile home or manufactured home for the sole purpose of
7 disposal, the county treasurer shall issue the permit provided by § 32-5-16.3 without receiving
8 payment of the current year's taxes. The Department of Revenue and Regulation shall
9 promulgate rules pursuant to chapter 1-26 to prescribe a form for the affidavit.

10 Section 5. The county treasurer shall deliver the affidavit filed pursuant to section 4 of this
11 Act to the board of county commissioners after issuance of the permit. Upon receipt of the
12 affidavit, the board of county commissioners shall abate any taxes owed on the mobile home
13 or manufactured home.

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

708N0475

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 183 - 02/02/2007

Introduced by: Senators Peterson (Jim), Bartling, and Hanson (Gary) and Representatives
Pitts, DeVries, Hargens, Rausch, Sigdestad, Street, and Tidemann

1 FOR AN ACT ENTITLED, An Act to revise the definition of agricultural purposes used for the
2 administration of the sales and use tax.

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

4 Section 1. That subdivision (1) of § 10-45-1 be amended to read as follows:

5 (1) "Agricultural purposes," the ~~producing, raising, growing, or harvesting of food or~~
6 ~~fiber upon agricultural land, including dairy products, livestock, and crops~~ raising or
7 harvesting of crops or timber or fruit trees, the rearing, feeding, or management of
8 farm livestock, poultry, fish, or nursery stock, the production of bees and apiary
9 products, or horticulture. The services of custom harvesters, chemical applicators,
10 fertilizer spreaders, hay grinders, and cultivators are considered agricultural purposes;

11



State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

752N0708

SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 193** - 02/02/2007

Introduced by: Senators McCracken, Albers, Gant, Gray, Hansen (Tom), Nesselhuf, and Olson (Ed) and Representatives Cutler, Boomgarden, Faehn, Jerke, and Miles

1 FOR AN ACT ENTITLED, An Act to prohibit the abuse of certain elderly persons and to revise
2 certain provisions regarding the abuse of disabled adults.

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

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

5 22-46-1. Terms used in this chapter mean:

6 (1) "Abuse," physical harm, bodily injury, or attempt to cause physical harm or injury,
7 or the infliction of fear of imminent physical harm or bodily injury on an elder or a
8 disabled adult;

9 (2) "Disabled adult," a person eighteen years of age or older who suffers from a
10 condition of mental retardation, infirmities of aging as manifested by organic brain
11 damage, advanced age, or other physical dysfunctioning to the extent that the person
12 is unable to protect himself or herself or provide for his or her own care;

13 (3) "Elder," a person sixty-five years of age or older;

14 (4) "Exploitation," the wrongful taking or exercising of control over property of an elder
15 or a disabled adult with intent to defraud ~~that the elder or~~ disabled adult; and



1 ~~(4)~~(5) "Neglect," harm to an elder's or a disabled adult's health or welfare, without
2 reasonable medical justification, caused by the conduct of a person responsible for
3 the elder's or disabled adult's health or welfare, within the means available for the
4 elder or disabled adult, including the failure to provide adequate food, clothing,
5 shelter, or medical care.

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

8 For the purposes of this chapter, the term, neglect, does not include a decision that is made
9 to not seek medical care for an elder or disabled adult upon the expressed desire of the elder or
10 disabled adult; a decision to not seek medical care for an elder or disabled adult based upon a
11 previously executed declaration, do-not-resuscitate order, or a power of attorney for health care;
12 a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law;
13 or the failure to provide goods and services outside the means available for the elder or disabled
14 adult.

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

16 22-46-2. Any person who abuses or neglects an elder or a disabled adult in a manner which
17 does not constitute aggravated assault is guilty of a Class 6 felony.

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

19 22-46-3. Any person who, having assumed the duty by written contract, by receipt of
20 payment for care, or by order of a court to provide for the support of an elder or a disabled adult,
21 and having been entrusted with the property of that elder or disabled adult, with intent to
22 defraud, appropriates such property to a use or purpose not in the due and lawful execution of
23 that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft
24 pursuant to chapter 22-30A.

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

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

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

9 34-12-51. Any institution regulated pursuant to chapter 34-12 and any employee, agent, or
10 member of a medical or dental staff thereof who, in good faith, makes a report of abuse,
11 exploitation, or neglect of a any elder or disabled adult, is immune from any liability, civil or
12 criminal, that might otherwise be incurred or imposed, and has the same immunity with respect
13 to participation in any judicial proceeding resulting from ~~such~~ the report. This immunity ~~also~~
14 extends in a like manner to any public official involved in the investigation of abuse,
15 exploitation, or neglect of any elder or disabled adult, or to any person or institution ~~provided~~
16 ~~herein~~ who in good faith cooperates with ~~such~~ any public officials in an investigation. The
17 provisions of this section do not extend to any person alleged to have committed any act of
18 abuse or neglect of a any elder or disabled adult or to any person who has aided and abetted any
19 such act.

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

22 Any person who, in good faith, makes a report of abuse, neglect, or exploitation of any elder
23 or disabled adult, is immune from any civil or criminal liability that might otherwise be incurred
24 or imposed, and has the same immunity with respect to participation in any judicial proceeding

1 resulting from the report. This immunity extends in a like manner to any public official involved
2 in the investigation of abuse, neglect, or exploitation of any elder or disabled adult, or to any
3 person or institution who in good faith cooperates with any public official in an investigation.
4 The provisions of this section do not extend to any person alleged to have committed any act
5 of abuse or neglect of any elder or disabled adult or to any person who has aided and abetted any
6 such act.