

**2023 SENATE INDUSTRY AND BUSINESS**

**SB 2325**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

SB 2325  
1/23/2023

A bill relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.

3:00 PM Chairman D. Larsen called the meeting to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Boehm, and Senator Klein.

### Discussion Topics:

- Restitution
- Committee action

3:04 PM Senator Lee introduced SB 2325 and testified in favor. (verbal)

3:09 PM Karen Tyler, State Securities Commission, testified in favor. #15449, #15450, #15451

3:33 PM Janell Moos, Associate State Director of Advocacy, AARPND, testified in favor of SB 2325. #15552, #15551

3:42 PM Chairman D. Larsen closed the hearing on SB 2325.

3:43 PM Senator Klein moved to adopt the amendment to SB 2325. LC 23.1036.01001.

3:44 PM Senator Boehm seconded.

Roll call vote-Adopt the Amendment

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed: 5-0-0 Adopt the Amendment

3:45 PM Senator Klein moved DO PASS AS AMENDED and be Referred to Appropriation.

3:45 PM Senator Barta seconded.

3:45 PM Roll call vote – DO PASS AS AMENDED and be Referred to Appropriation.

<b>Senators</b>	<b>Vote</b>
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion passed: 5-0-0 DO PASS AS AMENDED and be Referred to Appropriation.

Senator Barta will carry.

3: 48 PM Chairman D. Larsen adjourned the meeting.

*Brenda Cook, Committee Clerk*

January 23, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2325

*AK  
1-23-23  
(1-1)*

Page 1, line 2, remove "vulnerable adult"

Page 1, line 2, after "restitution" insert "assistance"

Page 1, line 7, replace "**Vulnerable adult restitution**" with "**Restitution assistance**"

Page 1, line 21, remove "vulnerable"

Page 1, line 22, remove the first "adult"

Page 1, line 22, after "restitution" insert "assistance"

Page 1, line 23, after "dollars" insert "per biennium"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2325: Industry and Business Committee (Sen. Larsen, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2325 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, remove "vulnerable adult"

Page 1, line 2, after "restitution" insert "assistance"

Page 1, line 7, replace "**Vulnerable adult restitution**" with "**Restitution assistance**"

Page 1, line 21, remove "vulnerable"

Page 1, line 22, remove the first "adult"

Page 1, line 22, after "restitution" insert "assistance"

Page 1, line 23, after "dollars" insert "per biennium"

Renumber accordingly

**2023 SENATE APPROPRIATIONS**

**SB 2325**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

SB 2325  
2/2/2023

A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.

8:05 AM Chairman Bekkedahl opened the hearing on SB 2325.

Members present : Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, and Mathern.

### Discussion Topics:

- Harmed investor restitution
- Qualifications
- Limits

8:07 AM Senator Judy Lee, introduced the bill, no written testimony

8:08 AM Senator Jeff Barta, introduced the bill, no written testimony

8:11 AM Karen Tyler, State Securities Commissioner, testified in favor. #18591, #18775

### Additional written testimony:

- Janelle Moos, testimony # 17540

8:28 AM Chairman Bekkedahl closed the hearing.

8:28 AM Senator Davison moved DO PASS.

Senator Burckhard seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Senate Appropriations Committee  
SB 2325  
February 2, 2023  
Page 2

Motion PASSED 16-0-0

Senator Barta will carry the bill.

8:29 AM Chairman Bekkedahl closes the meeting.

*Kathleen Hall, Committee Clerk*



**REPORT OF STANDING COMMITTEE**

**SB 2325, as engrossed: Appropriations Committee (Sen. Bekkedahl, Chairman)** recommends **DO PASS** (16 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2325 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2023 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2325**

# 2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

SB 2325  
3/7/2023

Relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.

Vice Chairman Ostlie called meeting to order 2:30 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

## Discussion Topics:

- Restitution Assistance Fund
- Investment Fraud
- Investment Claim
- Violations of Securities Act
- Vulnerable Adult
- Adult Protection Services
- Restitution to Harmed Investors
- NASAA model legislation, best practices
- Conditions for Proposed Fund

## In Favor:

Karen Tyler, Commissioner, ND Securities Department, #22629, #22630

Senator Judy Lee, District 13 West Fargo, ND, Primary bill sponsor, (no written testimony)

Janelle Moos, Associate State Director of Advocacy, AARP North Dakota, #22265

Chairman Louser adjourned the meeting 3:01 PM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2325  
3/14/2023

Relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.
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Vice Chairman Ostlie called meeting to order 11:46 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

### Discussion Topics:

- Gifting clause in century code
- Safety net
- Scam impacts
- Sunset clause
- Monetary level

Karen Tyler, Commissioner, ND Securities Department (no written testimony)

Representative Koppelman moved a do not pass.  
Representative Ruby seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	N
Representative Hamida Dakane	N
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	N
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 6-8-0

Representative Koppelman moved a do pass and rerefer to appropriations.  
Representative Ostlie seconded.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	N
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	N
Representative Hamida Dakane	N
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	N
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 3-11-0

Representative Johnson moves to amend by adding a 4-year sunset clause.  
Representative Wagner seconded.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	N
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 13-1-0

Chairman Louser the committee will hold this bill to further amend the monetary level.

House Industry, Business and Labor Committee

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Chairman Louser adjourned the meeting 12:19 PM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2325  
3/22/2023

Relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.
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Chairman Louser called meeting to order 9:43 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

### Discussion Topics:

- Definition of victim
- Senior adult
- Vulnerable definition

Representative Koppelman moved the amendment, #26506.  
Representative Warrey seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	N
Representative Paul J. Thomas	N
Representative Bill Tveit	Y
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 7-7-0

Representative Ruby moved a do not pass.  
Representative Kasper second.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	Y
Representative Mitch Ostlie	N
Representative Josh Boschee	N
Representative Josh Christy	N
Representative Hamida Dakane	N
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	N
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	N
Representative Jonathan Warrey	N

Motion failed 6-8-0

Representative Boschee moved do pass and referred to appropriations.  
Representative Wagner seconded.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	N
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Dan Ruby	N
Representative Austen Schauer	Y
Representative Paul J. Thomas	N
Representative Bill Tveit	N
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 8-6-0

Representative Warrey will carry the bill.

Chairman Louser adjourned the meeting 10:12 AM

*Diane Lillis, Committee Clerk*



**REPORT OF STANDING COMMITTEE**

**SB 2325**, as engrossed: **Industry, Business and Labor Committee (Rep. Louser, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2325 was rereferred to the **Appropriations Committee**.

**2023 HOUSE APPROPRIATIONS**

**SB 2325**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Brynhild Haugland Room, State Capitol

SB 2325  
3/30/2023

Relating to the restitution assistance fund for victims of securities violations
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**9:37 AM Chairman Vigesaa** Called the meeting to order and roll call was taken-

**All Members Present;** Chairman Vigesaa, Representative Kempenich, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

### Discussion Topics:

- Securities Department Funds
- Limited Restitution
- Result of the Order of the Commissioner

**Karen Tyler, ND Securities Commissioner** – Introduces the bill and its purpose.

**Representative Mock-** Move a Do Pass

**Representative Monson-** Seconds the motion.

Committee Discussion Roll call vote;

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Mike Brandenburg	Y
Representative Karla Rose Hanson	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	Y
Representative Mike Nathe	Y

Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

**Motion Carries 23-0-0 Representative Warrey will carry the bill**

**9:53 AM Chairman Vigesaa** Closed the meeting for SB 2325

*Risa Berube, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2325, as engrossed: Appropriations Committee (Rep. Vigesaa, Chairman)**  
recommends **DO PASS** (23 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2325 was placed on the Fourteenth order on the calendar.

**TESTIMONY**

**SB 2325**

**Testimony in Support of SB 2325**  
**North Dakota Securities Commissioner Karen Tyler**  
**Senate Industry and Business Committee**  
**January 23, 2023**

Good afternoon, Mr. Chairman and members of the Committee. I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2325 which creates a restitution assistance fund for certain victims of securities law violations.

This bill establishes the restitution fund, identifies that the revenue of the Department is the funding source for providing restitution to harmed investors, identifies the parameters for qualifying for this assistance, sets limits on the assistance provided, and creates the necessary authorities for the Commissioner to administer the fund.

To help frame the need for and the benefit of this additional investor protection mechanism, and how it enhances the existing enforcement authority of the Department, I would like to first share with you some information related to the characteristics of our investment fraud investigations, review some data related

to fraud and misconduct involving senior victims and then address specific conditions of the proposed fund, and suggest an amendment.

When I was testifying before this committee a couple of weeks ago on our agency pre-filed bill, I shared with you that our work to protect investors can be broken down into two categories:

- 1. regulating the capital formation process**
- 2. regulating the conduct of investment industry firms and professionals**

And while these are very distinct functions (the issuance of securities vs. the intermediation of securities transactions), what is common to both categories is the potential, the possibility, that fraud and misconduct can occur, and further, where fraud or misconduct is perpetrated, what is also common to both categories is that older investors are often the target.

For purposes of conveying our support of this bill, I will shift the focus - instead of the focusing on these two securities related functions, I want to focus on the person engaging in the fraud or misconduct, how this impacts the outcome of an investigation, and the likelihood of a successful resolution for the harmed investor, which ties directly to the need and benefit of the proposed restitution assistance fund.



## **Registered Persons vs. Unregistered Persons and Financial Criminals**

If an investigation involves the conduct of a registered financial professional who works for a registered investment firm, the likelihood of a resolution that makes the investor whole is very high. Our securities laws provide strong enforcement mechanisms such as the potential for revocation of a firm or professional's registration, the ability to assess significant civil penalties per violation, and the ability to order the return of the investor's funds plus interest. These are authorities that currently exist in our securities act and they are exceedingly effective in resolving cases involving registered firms and professionals.

If, however, the violation involves an unregistered person with no affiliation to a brokerage firm or investment adviser firm, the likelihood of recovery of assets and a successful outcome for the harmed investor is substantially lower.

In those cases where recovery is unlikely, if not impossible, and the victim is a senior or vulnerable adult, this proposed restitution assistance fund will provide at least some level of relief.

There are a number of factors that converge to position seniors as a highly targeted cohort. This cohort is where the money is, this is where the potential for cognitive decline is most prevalent, this is where social isolation creates

vulnerability, and this is where reluctance to report a violation is strongest, allowing for continuation of the fraud. Attached to my testimony is a document with a variety of study summaries and statistics that provide more detail on these targeting factors.

Overall this age cohort has accumulated the most wealth, but of course that wealth is not evenly distributed. Many seniors live on very modest, fixed incomes and have little savings. Seniors as a cohort are relentlessly targeted because of the potential for a big score or a series of smaller takes, and victimization by a financial criminal will hit some seniors much much harder than others.

According to a study recently released by NDSU and the ND Housing Finance Agency, the most significant population change we will see here in ND in the next few years is the “aging forward” of our baby boomer population, with a 24% growth rate in the number of people over age 65 occurring by 2025. We also have an increasing number of people aging in place, which on the one hand is a really great thing but on the other hand can increase a variety of risks associated with isolation including the risk of fraud victimization. Currently 1/3 of people living alone in North Dakota are over the age of 65.

Data from our enforcement cases supports the findings of studies and research that indicates seniors are the most heavily targeted by financial fraud and exploitation.

In those cases where we are unable to secure the return of assets for a harmed investor through our existing enforcement authority, this proposed restitution assistance fund could provide some relief under the qualified circumstances. This bill is based on model legislation that was created from the best practices of a number of restitution assistance funds currently active in other states.

It provides for an application and qualification process, sets parameters for receiving and returning a payment, limits payments to the lesser \$50,000 or 50% of losses per qualified claimant, and sets certain discretionary authorities of the Commissioner.

The funding source is revenue generated by the Department – up to \$1 million per biennium. The Department will generate approximately \$23 million in the current biennium and our budget appropriation is \$3.3 million, making the restitution appropriation a very manageable number, and in our view a very meaningful use of the Department's revenue.

## **Proposed Amendments:**

### **Page 1, Line 7 and Lines 21-22**

This proposed amendment changes the name of the fund to avoid any potential misinterpretation caused by use of the terminology “vulnerable adult”, which is defined elsewhere in century code.

### **Page 1, Line 23**

This proposed amendment clarifies that it is on a per biennium basis that up to \$1 million will be transferred to the restitution assistance fund.



## Senate Bill No. 2325

### Types of investment frauds used to target seniors

#### **Ponzi Schemes**

- The product being offered can be anything—foreign exchange, a stock trading model, securitized instrument, investment pool, precious metal, etc.
- High returns are usually promised
- Risk is claimed to be minimal
- There's often no legitimate product
- Investors are paid with money from new investors

#### **Private Placement Fraud**

- A private placement is an offering of unregistered securities to a small or limited pool of investors. Because the offering is not registered, there is often limited information available about the investment.
- In a private placement, a company typically sells shares of stock, partnership interests or membership interests in the company in exchange for cash from the investor.

#### **Promissory Note Schemes**

- A promissory note is a form of debt security that a company may issue to raise money.
- Typically, an investor agrees to invest money in a company for a set amount of time. In exchange, the company promises to pay the investor a fixed return on their investment, typically principal plus annual interest.
- While promissory notes can be legitimate investments, those that are marketed broadly to individual investors often turn out to be scams.

#### **Unregistered Persons**

- Unregistered persons who sell securities perpetrate many of the securities frauds that target retail investors, and seniors are often the most heavily targeted.
- Always check whether the person offering to sell you an investment is registered and properly licensed, even if you know them personally.

## **Investment Property Schemes**

-The scams, sometimes pitched as “investment clubs”, involve the purchase of properties at artificially inflated prices, pitched as investment opportunities to inexperienced real estate investors who are promised improbably high returns and low risk.

## **Other types of frauds used to target seniors**

**“Even though older consumers are less likely to report losing money to scams, certain scams are more likely to strike them.** For example, older adults were more likely than younger consumers to report losing money on tech support scams, prize, sweepstakes & lottery scams, and family & friend impersonation. Phone scams did the most financial damage. And while gift cards became the payment of choice for scammers, wire transfers still take the top spot for total dollars paid.”

*Source: FTC 2019*

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### **Advance Fee Fraud:**

- Involve requests for up-front money or bank account details to secure investor’s involvement in their transaction
- Millions of dollars are promised in return once the transaction is complete
- Examples are funding for a business, bogus prize scams, lottery scams, sweepstakes scams

### **Charity Fraud:**

- The act of using deception to get money from people who believe they are making donations to charities
- Common after high-profile disasters
- May also occur when a legitimate charity represents that funds will be used for a specific purpose but the money is used for other purposes

### **Construction and Home Repair Fraud:**

- A person or company has been paid to perform a job, but either the job was not performed, or the work was performed poorly or not completed
- A typical scenario involves an uninvited door-to-door solicitation from a contractor claiming to have a “special price” on roofing, siding, windows, asphalt, or other services

### **Credit Card Fraud:**

- The perpetrator obtains credit card information and uses it to charge items to senior's account
- Information could be obtained many ways such as physical theft, stolen from unsecured websites, or skimmer card reader device at a gas station or ATM, etc.

### **Government Imposter Scams:**

- Con-artists impersonate government employees using aggressive and sophisticated tactics
- For example, may use fake names and phony IRS identification badge numbers
- Con-artists take advantage of some people's fear of the IRS to scare them into providing sensitive information or money by phone, email, or snail mail

### **Grandparent Scam:**

- Con-artists call or email the senior posing as a relative in distress or someone claiming to represent the relative (such as a lawyer or law enforcement agent)
- The "relative" of the grandparent explains they are trouble and need the grandparent to wire funds
- The senior is urged not to tell anyone, such as the parent of the "grandchild"

### **Home Ownership or Loan Fraud:**

- Signing Blank Documents: The homeowner is tricked into signing a lien document or deed transfer that has been disguised as other paperwork. Or, a homeowner signs a blank document and the signature is used on a lien or transfer document.
- Trusting People: Seemingly trustworthy people befriend senior homeowners and gain their trust. Once trust has been established, the senior is urged to transfer the deed to their home or set up home equity loans that allow the "friend" to unjustly access the homeowner's equity.
- Deed Forgeries: Scam artists forge the homeowner's signature on a blank "grant deed" in order to transfer ownership of property. With the phony deed, the scam artist can borrow against the equity in the home.

### **Lottery and Sweepstakes Scams:**

- Calls or online solicitations that claim the senior was automatically entered in a sweepstakes they've never heard of before
- Con-artist will ask the senior to pay "fees" upfront before having access to winnings
- Once the con-artist gets payment, the senior never receives any prize/winnings and the money is gone
- A person calls the senior to say they have a winning state lottery ticket but needs help paying an upfront fee to collect on it

### **Romance Scam:**

- Con-artists use dating sites, apps, phone calls, and social media to scout for lonely men and women
- After developing an on-line relationship and gaining trust, the con-artist says they are in need of money for an emergency such as to get out of a debt, a bad investment, medical bills, travel expenses etc. Repayment is promised but never happens.
- Con-artist may also get the victim to open a new bank account or crypto wallet that the con-artist gains access to and empties.

### **Tech Support Repair Scams:**

- The con-artist wants the senior to believe that they have a serious problem with their computer, such as a virus
- They want the senior to pay for tech support services they do not need
- Will often attempt to pressure the senior into paying by wiring money, putting money on a gift card, prepaid card or cash reload card, or using a money transfer app

*Source: NASAA*

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More than half of all Suspicious Activity Reports (SARs) filed by banks and related to Senior Financial Exploitation involve a money transfer.

The average loss by seniors for the measured period was \$32,800 for SARs involving a money transfer.

The second-most common financial product used to move funds was a checking or savings account (44 percent).

Checking or savings accounts had the highest monetary losses. The average monetary loss to the older adult was \$48,300 for SARs involving a checking or savings account.

The Consumer Financial Protection Bureau reports that SARs **quadrupled** from 2013 to 2017.

*Source: Consumer Financial Protection Bureau*

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## Risk Factors

Older adults can become targets because of the retirement savings and other assets they have spent decades building up.

Older adults tend to have financial resources that younger adults do not, in addition to higher rates of social isolation and cognitive decline, making them particularly vulnerable to financial exploitation.

*Source: Stephen Deane, Office of Investor Advocate, SEC. [Elder Financial Exploitation White Paper \(sec.gov\)](#)*

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Nearly half of those over the age of 85, the fastest growing segment of our population, have Alzheimer's disease or another kind of dementia.

In 2017, an estimated 5.5 million Americans were estimated to have Alzheimer's with a diagnosis of Dementia. More than 96 percent of that group (5.3 million people) consisted of persons age 65 or older.

By 2050, the number of people age 65 and older with Alzheimer's disease is expected to more than double, to 13.8 million, absent medical breakthroughs to prevent or cure the disease.

*Source: SEC, Office of the Investor Advocate*

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With the aging of the baby boomers, an average of 10,000 Americans have been turning 65 every day and will continue at that rate until the year **2030**.

By **2030**, one in five persons in the U.S. are projected to be 65 or older and their numbers are projected to reach 74 million.

By **2050**, the elderly population in America is expected to reach **88** million.

By **2060**, more than **98** million.

*Source: SEC*

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Studies investigating the relationships between aging and cognitive impairment have concluded that financial decision-making is one of the first skills to decline. Problems with financial decision-making, including reconciling checking, savings, and other accounts, are now widely acknowledged to be early warning signs of cognitive decline.

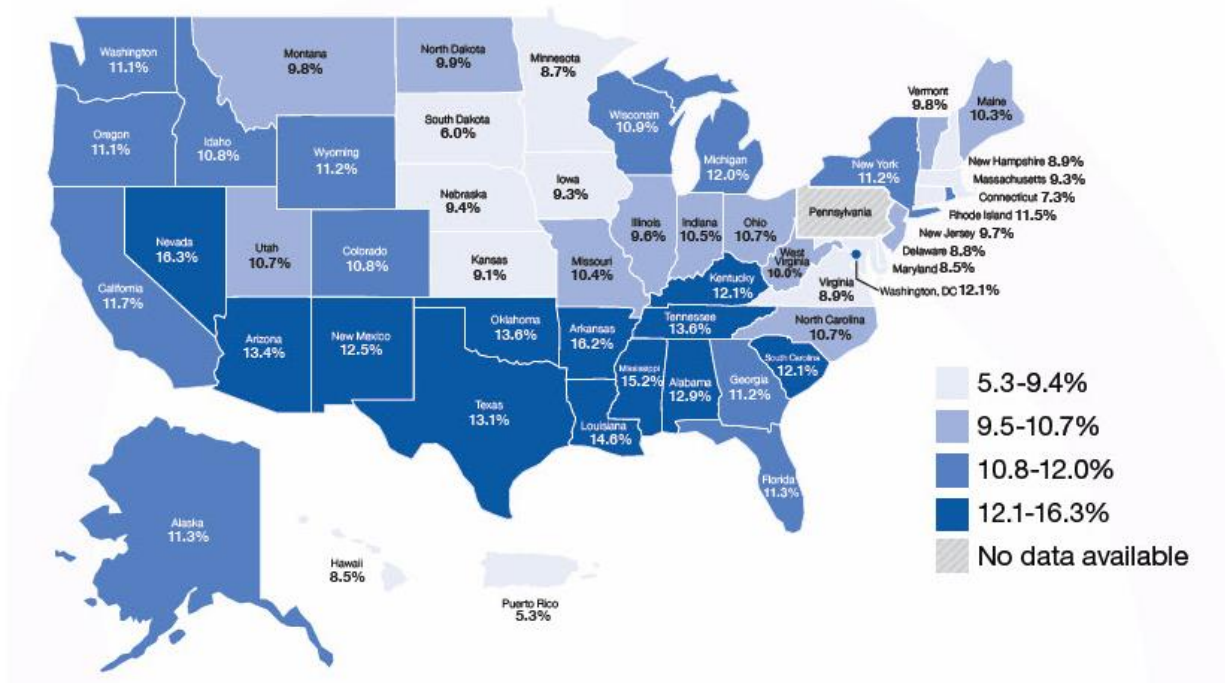
Loss of “executive function” overtime: the complex mental processes and cognitive abilities (such as working memory, impulse inhibition, and reasoning) that control the skills (such as organizing tasks, remembering details, managing time, and solving problems) required for goal-directed behavior.

Researchers have consistently found a strong relationship between healthy executive functions and good financial decision-making. Sound financial decision-making requires the ability to limit impulsive urges, plan ahead, and think abstractly, especially when it comes to being able to understand and predict the future consequences of a specific action taken today. The ability to organize, “connect the dots,” and control impulses may in fact be the most important cognitive functions underpinning good financial decision-making.

Source: Chris Heye, PhD, Retirement Income Institute

## Prevalence of Subjective Cognitive Decline in the U.S.

Figure 1: Adults 45 years of age and older with Subjective Cognitive Decline



Source: Centers for Disease Control and Prevention

## Data: Money lost due to exploitation of seniors

### 2019 Top Fraud Types by Total Dollars Lost (Ages 60 and over)



REPORTED DOLLAR LOSS

Sentinel fraud types classified as "unspecified" are excluded. The Investment: Advice, Seminars, Investment: Art/Gems/Rare Coins, Investment: Stock/Commodity Futures Trading and Investment (Other) fraud types are grouped as "Investments" for this visualization.

Source: *Consumer Affairs 2019*

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Older adults are swindled out of more than \$3 billion each year.

More than 3.5 million older adults are victims of financial exploitation each year.

Seniors targeted by fraudsters suffer an average loss of \$34,200.

Source: *Consumer Affairs 2022* [Elder Financial Abuse Statistics 2023: Common Scams & Frauds | ConsumerAffairs](#)

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Total Financial Assets: Americans over the age of 50 currently account for 77 percent of financial assets in the United States, according to the Securities Industry and Financial Markets Association (SIFMA).

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Americans age 70 and above have a net worth of nearly \$35 trillion, according to Federal Reserve data. Their wealth is equal to 157% of U.S. gross domestic product, more than double the proportion 30 years ago, federal data show.

*Source: Wall Street Journal 2021*

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Older Americans are one of the fastest-growing demographics in the country, with an average of 10,000 Americans turning 65 every day. Con artists tend to target older people, in part because they are more likely to have built up nest eggs, according to the FBI. And the U.S. Department of Justice estimates that \$3 billion is stolen or defrauded from millions of elderly Americans every year.

*Source: FINRA [Protecting Seniors From Financial Exploitation | FINRA.org](#)*

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The overwhelming majority of incidents of elder financial exploitation go unreported to authorities. For every documented case of elder financial exploitation, 44 went unreported according to a New York state study.

*Source: Stephen Deane, Office of Investor Advocate, SEC. [Elder Financial Exploitation White Paper \(sec.gov\)](#)*

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The Federal Trade Commission suggests seniors are 94% more likely to report fraud attempts if they haven't lost any money. This hesitancy to report lost money can be due to shame and older people not wanting to alert family members about an inability to manage their finances.

*Source: Consumer Affairs 2022 [Elder Financial Abuse Statistics 2023: Common Scams & Frauds | ConsumerAffairs](#)*

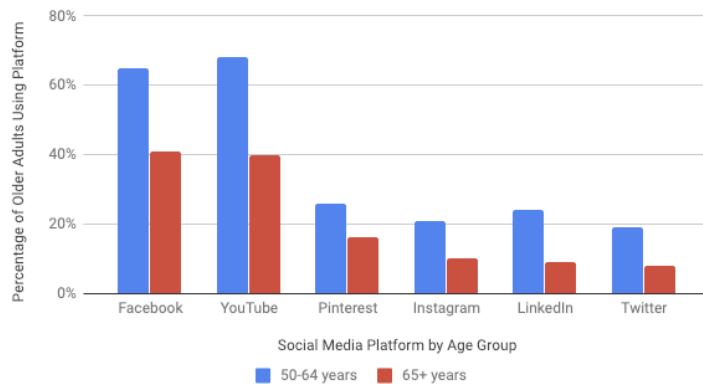
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# Social Media Use

## SOCIAL MEDIA USE BY SENIORS

What social media platforms do Seniors use? The simple answer is Facebook, YouTube, Pinterest, Instagram, LinkedIn and Twitter. Although the rankings are not equal. According to the Pew Institute in a study published in 2018, Facebook and Youtube are the top platforms used by older adults by a wide margin. The other four platforms of note are nearly equal in popularity. Here are the Pew data.

Social Media Use by Older Adults



Age Group	Facebook	YouTube	Pinterest	Instagram	LinkedIn	Twitter
50-64 years	65%	68%	26%	21%	24%	19%
65+ years	41%	40%	16%	10%	9%	8%

Facebook is still by far the most popular social platform for seniors.

Source: *Pew Research data via Senior Tech Club* [Social Media for Older Adults | Senior Tech Club](#)

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When the Center began tracking internet adoption in early 2000, just 14% of seniors were internet users. But today, 67% of adults ages 65 and older say they go online.

Today, 34% of Americans ages 65 and up say they use social networking sites like Facebook or Twitter. This represents a seven-point increase from 2013, when 27% of older adults reported using social media.

Younger seniors are more likely than their older counterparts to use social media. More than four-in-ten (45%) seniors under the age of 75 say they use social networking sites, compared with 20% of those ages 75 and older. Social networking use is also relatively

common among those who have at least some college experience and those whose annual household income is \$50,000 or more.

*Source: Pew Research 2017 [Technology use among seniors | Pew Research Center](#)*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2325

Page 1, line 7, replace "Vulnerable adult restitution" with "Restitution assistance"

Page 1, line 21 through 22, replace "vulnerable adult restitution" with "restitution assistance"

Page 1, line 23, after "dollars" insert "per biennium"

Renumber accordingly



# Fraud Prevention



## 2021 Top Scams Data North Dakota

### TOP FIVE REPORT CATEGORIES

Imposter Scams

**22%**

Identity Theft

**18%**

Online Shopping and Negative Reviews

**9%**

Prizes, Sweepstakes and Lotteries

**5%**

Credit Bureaus, Information Furnishers and Report Users

**4%**

### TOTAL FRAUD REPORTS

**49th**

State Rank  
(Reports per 100K Population)

**4,637**

Total Fraud Reports

### FRAUD LOSSES

**\$8.9M**

Total Fraud Losses

**\$440**

Median Fraud Losses

### IDENTITY THEFT REPORTS

**44th**

State Rank  
(Reports per 100K Population)

**999**

Identity Theft Reports

### TOP IDENTITY THEFT TYPES

Other Identity Theft\* (Description below)

**28%**

Government Documents or Benefits Fraud

**26%**

Credit Card Fraud

**18%**

Loan or Lease Fraud

**13%**

Employment or Tax-Related Fraud

**12%**

\*Includes: Other, Medical Services, Online Shopping or Payment Account, Email or Social Media, Evading the Law, Insurance, and Securities Accounts.

Source: Federal Trade Commission Consumer Sentinel Network Data Book 2021







Senate Industry Business Committee

**IN SUPPORT-SB 2325**

January 23, 2023

Janelle Moos, AARP North Dakota

[jmoos@aarps.org](mailto:jmoos@aarps.org) – (701) 355-3641

Chairman Larsen and Members of the Senate Industry Business Committee-

My name is Janelle Moos, Associate State Director for Advocacy with AARP North Dakota. I'm here to provide support for SB 2325.

Consumer fraud is soaring. Reported losses to fraud skyrocketed to \$5.9 billion in 2021, an increase of more than 70 percent from a year earlier, according to the Federal Trade Commission, a consumer protection agency with little chance of restitution because many criminals exist outside of the U.S., laws are outdated, and law enforcement can be reluctant to prosecute. The massive disruption and digital revolution being seen in the financial industry is opening new doors for criminals to use new and different avenues for their crimes. Retailers are now selling financial products (gift cards, pre-paid debit cards) and offering financial services (check-cashing, wire transfers). Peer-to-peer payment services like PayPal, Zelle and Venmo make bank accounts, credit cards and other financial services just a few clicks away.

A recent AARP survey found that nine in 10 Americans 18-plus (229 million people) encountered a fraud attempt in the past year – and that one in six of them (33 million people) lost money as a result. A separate poll found that almost 60 million Americans lost money to phone scams last year. One out of five older adults are victims of financial exploitation, and the average victim loses \$120,000.

Older adults are often targeted because they are seen as having wealth in the form of retirement savings, perhaps a pension, a steady Social Security check and wealth wrapped up in their home. But we also know that when older adults are exploited, the impact can be especially severe. Con artists typically extract more money from their older targets. And these victims have reached a time of life when they are least able to recover financially.

Some of the most heartbreaking calls AARP receives are from people who fear that they or their parents have been scammed. Research shows that if someone hears about a scam, they are 80% less likely to engage with it and, if they do engage, they are 40% less likely to fall victim.

That is why AARP has put consumer education at the core of its approach to fraud prevention. AARP set up the Fraud Watch Network (FWN) in 2013, a nationally acclaimed program to help protect older adults and their loved ones. The response has been overwhelming. In 2019 alone, AARP experts fielded tens of thousands of calls from people seeking advice from the [Fraud Watch Network helpline](#). The network has reached out to consumers in many other ways, such as with a fully updated fraud resource and information center on the AARP website. It has also established critical links to federal and state law enforcement organizations, to make sure it is giving people the most up-to-date information. In addition to an impressive array of tools and resources, FWN is leading an initiative to change how people respond to fraud, with a focus on treating fraud as the crime that it is.

What makes this population vulnerable? They're good targets. Many live alone, making them vulnerable. They're more trusting and can have trouble spotting scams. To society, however, all crime victims are not alike. Our language blames people who lose money to a scam. We say "She fell for it." Or "He was duped." Or "You got scammed." These are words of judgment. Even victims – when they aren't too embarrassed to admit they fell victim – use harsh words to describe what happened to them. Yet the reality is that people who fall victim to scams and fraud are just that, victims, as with other crimes in our society. We are working to change this paradigm and SB 2325 is a step towards fully recognizing securities fraud for the crimes they perpetrate.

We also have strong relationships with local partners to educate and fight against securities and consumer fraud. Roughly ten states, including North Dakota have tapped into a national relationship with the influential International Association of Financial Crimes Investigators (IAFCI), whose members are police, detectives, federal agents, and private company fraud investigators. IAFCI members participate with state offices in community outreach events. About two thirds of state offices also have active relationships with the state Attorney General or consumer advocate. We also have collaborated with the ND Securities Office to highlight how to spot securities fraud, steps to report it and how securities fraud is investigated. Other state partners include elder justice coalitions, US Attorneys, local FBI offices, and many local nonprofits.

The impact on victims and their families is wide reaching and can be financially and emotionally devastating, especially for older Americans.

Consumers lose billions of dollars each year to financial fraud, including investment fraud. Older adults are targets because they often have sizable assets. Even when the investment is not outright fraudulent, investors may be unfairly manipulated or their money seriously mismanaged. State governments have the authority to protect investors against fraud and abuse.

AARP supports laws and regulations should strengthen and enhance consumer protection. Policymakers should enhance protections against unfair, deceptive, or abusive practices. Consumers should have access to remedies for violations of law. We need policies that encourage people to report when a crime has happened and ensure that they can see some sort of restitution, especially in cases where a judgement is awarded and there is no money to recompensate a victim. SB 2325 is a step in that direction for securities victims.

Fraud and other financial crimes, including securities fraud, create real financial devastation — billions of dollars are lost each year, and it's a crime we don't pay enough attention. More is needed to combat this problem. AARP supports protections against fraud and scams and urge you to support of SB 2325. Thank you.



Senate Industry Business Committee

**IN SUPPORT-SB 2325**

February 2, 2023

Janelle Moos, AARP North Dakota

[jmoos@arp.org](mailto:jmoos@arp.org) – (701) 355-3641

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**Testimony in Support of SB 2325**  
**North Dakota Securities Commissioner Karen Tyler**  
**Senate Appropriations**  
**February 2, 2023**

Good afternoon, Mr. Chairman and members of the Committee. I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2325 which creates a restitution assistance fund for certain victims of securities law violations.

This bill establishes the restitution fund, identifies that the revenue of the Department is the funding source for providing restitution to harmed investors, identifies the parameters for qualifying for this assistance, sets limits on the assistance provided, and creates the necessary authorities for the Commissioner to administer the fund.

To help frame the need for and the benefit of this additional investor protection mechanism, and how it enhances the existing enforcement authority of the Department, I would like to first share with you some information related to the characteristics of our investment fraud investigations, review some data related

to fraud and misconduct involving senior victims and then address specific conditions of the proposed fund, and suggest an amendment.

When I was testifying before this committee a couple of weeks ago on our agency pre-filed bill, I shared with you that our work to protect investors can be broken down into two categories:

- 1. regulating the capital formation process**
- 2. regulating the conduct of investment industry firms and professionals**

And while these are very distinct functions (the issuance of securities vs. the intermediation of securities transactions), what is common to both categories is the potential, the possibility, that fraud and misconduct can occur, and further, where fraud or misconduct is perpetrated, what is also common to both categories is that older investors are often the target.

For purposes of conveying our support of this bill, I will shift the focus - instead of the focusing on these two securities related functions, I want to focus on the person engaging in the fraud or misconduct, how this impacts the outcome of an investigation, and the likelihood of a successful resolution for the harmed investor, which ties directly to the need and benefit of the proposed restitution assistance fund.



## **Registered Persons vs. Unregistered Persons and Financial Criminals**

If an investigation involves the conduct of a registered financial professional who works for a registered investment firm, the likelihood of a resolution that makes the investor whole is very high. Our securities laws provide strong enforcement mechanisms such as the potential for revocation of a firm or professional's registration, the ability to assess significant civil penalties per violation, and the ability to order the return of the investor's funds plus interest. These are authorities that currently exist in our securities act and they are exceedingly effective in resolving cases involving registered firms and professionals.

If, however, the violation involves an unregistered person with no affiliation to a brokerage firm or investment adviser firm, the likelihood of recovery of assets and a successful outcome for the harmed investor is substantially lower.

In those cases where recovery is unlikely, if not impossible, and the victim is a senior or vulnerable adult, this proposed restitution assistance fund will provide at least some level of relief.

There are a number of factors that converge to position seniors as a highly targeted cohort. This cohort is where the money is, this is where the potential for cognitive decline is most prevalent, this is where social isolation creates

vulnerability, and this is where reluctance to report a violation is strongest, allowing for continuation of the fraud. Attached to my testimony is a document with a variety of study summaries and statistics that provide more detail on these targeting factors.

Overall this age cohort has accumulated the most wealth, but of course that wealth is not evenly distributed. Many seniors live on very modest, fixed incomes and have little savings. Seniors as a cohort are relentlessly targeted because of the potential for a big score or a series of smaller takes, and victimization by a financial criminal will hit some seniors much much harder than others.

According to a study recently released by NDSU and the ND Housing Finance Agency, the most significant population change we will see here in ND in the next few years is the “aging forward” of our baby boomer population, with a 24% growth rate in the number of people over age 65 occurring by 2025. We also have an increasing number of people aging in place, which on the one hand is a really great thing but on the other hand can increase a variety of risks associated with isolation including the risk of fraud victimization. Currently 1/3 of people living alone in North Dakota are over the age of 65.

Data from our enforcement cases supports the findings of studies and research that indicates seniors are the most heavily targeted by financial fraud and exploitation.

In those cases where we are unable to secure the return of assets for a harmed investor through our existing enforcement authority, this proposed restitution assistance fund could provide some relief under the qualified circumstances. This bill is based on model legislation that was created from the best practices of a number of restitution assistance funds currently active in other states.

It provides for an application and qualification process, sets parameters for receiving and returning a payment, limits payments to the lesser \$50,000 or 50% of losses per qualified claimant, and sets certain discretionary authorities of the Commissioner.

The funding source is revenue generated by the Department – up to \$1 million per biennium. The Department will generate approximately \$23 million in the current biennium and our budget appropriation is \$3.3 million, making the restitution appropriation a very manageable number, and in our view a very meaningful use of the Department's revenue.

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House Industry Business and Labor Committee

**IN SUPPORT-SB 2325**

March 7, 2023

Janelle Moos, AARP North Dakota

[jmoos@aarps.org](mailto:jmoos@aarps.org) – (701) 355-3641

Chairman Louser and Members of the House Industry, Business and Labor Committee-

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## Senate Bill No. 2325

### Types of investment frauds used to target seniors

#### **Ponzi Schemes**

- The product being offered can be anything—foreign exchange, a stock trading model, securitized instrument, investment pool, precious metal, etc.
- High returns are usually promised
- Risk is claimed to be minimal
- There's often no legitimate product
- Investors are paid with money from new investors

#### **Private Placement Fraud**

- A private placement is an offering of unregistered securities to a small or limited pool of investors. Because the offering is not registered, there is often limited information available about the investment.
- In a private placement, a company typically sells shares of stock, partnership interests or membership interests in the company in exchange for cash from the investor.

#### **Promissory Note Schemes**

- A promissory note is a form of debt security that a company may issue to raise money.
- Typically, an investor agrees to invest money in a company for a set amount of time. In exchange, the company promises to pay the investor a fixed return on their investment, typically principal plus annual interest.
- While promissory notes can be legitimate investments, those that are marketed broadly to individual investors often turn out to be scams.

#### **Unregistered Persons**

- Unregistered persons who sell securities perpetrate many of the securities frauds that target retail investors, and seniors are often the most heavily targeted.
- Always check whether the person offering to sell you an investment is registered and properly licensed, even if you know them personally.

## **Investment Property Schemes**

-The scams, sometimes pitched as “investment clubs”, involve the purchase of properties at artificially inflated prices, pitched as investment opportunities to inexperienced real estate investors who are promised improbably high returns and low risk.

## **Other types of frauds used to target seniors**

**“Even though older consumers are less likely to report losing money to scams, certain scams are more likely to strike them.** For example, older adults were more likely than younger consumers to report losing money on tech support scams, prize, sweepstakes & lottery scams, and family & friend impersonation. Phone scams did the most financial damage. And while gift cards became the payment of choice for scammers, wire transfers still take the top spot for total dollars paid.”

*Source: FTC 2019*

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### **Advance Fee Fraud:**

- Involve requests for up-front money or bank account details to secure investor’s involvement in their transaction
- Millions of dollars are promised in return once the transaction is complete
- Examples are funding for a business, bogus prize scams, lottery scams, sweepstakes scams

### **Charity Fraud:**

- The act of using deception to get money from people who believe they are making donations to charities
- Common after high-profile disasters
- May also occur when a legitimate charity represents that funds will be used for a specific purpose but the money is used for other purposes

### **Construction and Home Repair Fraud:**

- A person or company has been paid to perform a job, but either the job was not performed, or the work was performed poorly or not completed
- A typical scenario involves an uninvited door-to-door solicitation from a contractor claiming to have a “special price” on roofing, siding, windows, asphalt, or other services

### **Credit Card Fraud:**

- The perpetrator obtains credit card information and uses it to charge items to senior's account
- Information could be obtained many ways such as physical theft, stolen from unsecured websites, or skimmer card reader device at a gas station or ATM, etc.

### **Government Imposter Scams:**

- Con-artists impersonate government employees using aggressive and sophisticated tactics
- For example, may use fake names and phony IRS identification badge numbers
- Con-artists take advantage of some people's fear of the IRS to scare them into providing sensitive information or money by phone, email, or snail mail

### **Grandparent Scam:**

- Con-artists call or email the senior posing as a relative in distress or someone claiming to represent the relative (such as a lawyer or law enforcement agent)
- The "relative" of the grandparent explains they are trouble and need the grandparent to wire funds
- The senior is urged not to tell anyone, such as the parent of the "grandchild"

### **Home Ownership or Loan Fraud:**

- Signing Blank Documents: The homeowner is tricked into signing a lien document or deed transfer that has been disguised as other paperwork. Or, a homeowner signs a blank document and the signature is used on a lien or transfer document.
- Trusting People: Seemingly trustworthy people befriend senior homeowners and gain their trust. Once trust has been established, the senior is urged to transfer the deed to their home or set up home equity loans that allow the "friend" to unjustly access the homeowner's equity.
- Deed Forgeries: Scam artists forge the homeowner's signature on a blank "grant deed" in order to transfer ownership of property. With the phony deed, the scam artist can borrow against the equity in the home.

### **Lottery and Sweepstakes Scams:**

- Calls or online solicitations that claim the senior was automatically entered in a sweepstakes they've never heard of before
- Con-artist will ask the senior to pay "fees" upfront before having access to winnings
- Once the con-artist gets payment, the senior never receives any prize/winnings and the money is gone
- A person calls the senior to say they have a winning state lottery ticket but needs help paying an upfront fee to collect on it

### **Romance Scam:**

- Con-artists use dating sites, apps, phone calls, and social media to scout for lonely men and women
- After developing an on-line relationship and gaining trust, the con-artist says they are in need of money for an emergency such as to get out of a debt, a bad investment, medical bills, travel expenses etc. Repayment is promised but never happens.
- Con-artist may also get the victim to open a new bank account or crypto wallet that the con-artist gains access to and empties.

### **Tech Support Repair Scams:**

- The con-artist wants the senior to believe that they have a serious problem with their computer, such as a virus
- They want the senior to pay for tech support services they do not need
- Will often attempt to pressure the senior into paying by wiring money, putting money on a gift card, prepaid card or cash reload card, or using a money transfer app

*Source: NASAA*

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More than half of all Suspicious Activity Reports (SARs) filed by banks and related to Senior Financial Exploitation involve a money transfer.

The average loss by seniors for the measured period was \$32,800 for SARs involving a money transfer.

The second-most common financial product used to move funds was a checking or savings account (44 percent).

Checking or savings accounts had the highest monetary losses. The average monetary loss to the older adult was \$48,300 for SARs involving a checking or savings account.

The Consumer Financial Protection Bureau reports that SARs **quadrupled** from 2013 to 2017.

*Source: Consumer Financial Protection Bureau*

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## Risk Factors

Older adults can become targets because of the retirement savings and other assets they have spent decades building up.

Older adults tend to have financial resources that younger adults do not, in addition to higher rates of social isolation and cognitive decline, making them particularly vulnerable to financial exploitation.

*Source: Stephen Deane, Office of Investor Advocate, SEC. [Elder Financial Exploitation White Paper \(sec.gov\)](#)*

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Nearly half of those over the age of 85, the fastest growing segment of our population, have Alzheimer's disease or another kind of dementia.

In 2017, an estimated 5.5 million Americans were estimated to have Alzheimer's with a diagnosis of Dementia. More than 96 percent of that group (5.3 million people) consisted of persons age 65 or older.

By 2050, the number of people age 65 and older with Alzheimer's disease is expected to more than double, to 13.8 million, absent medical breakthroughs to prevent or cure the disease.

*Source: SEC, Office of the Investor Advocate*

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With the aging of the baby boomers, an average of 10,000 Americans have been turning 65 every day and will continue at that rate until the year **2030**.

By **2030**, one in five persons in the U.S. are projected to be 65 or older and their numbers are projected to reach 74 million.

By **2050**, the elderly population in America is expected to reach **88** million.

By **2060**, more than **98** million.

*Source: SEC*

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Studies investigating the relationships between aging and cognitive impairment have concluded that financial decision-making is one of the first skills to decline. Problems with financial decision-making, including reconciling checking, savings, and other accounts, are now widely acknowledged to be early warning signs of cognitive decline.

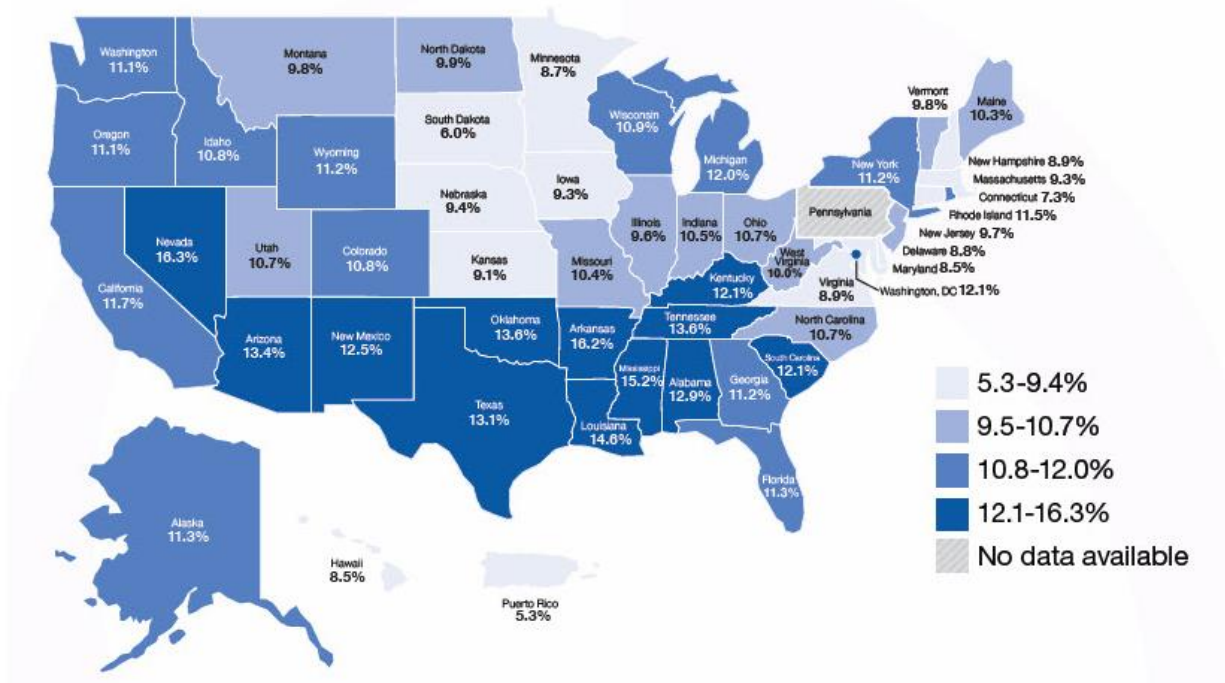
Loss of “executive function” overtime: the complex mental processes and cognitive abilities (such as working memory, impulse inhibition, and reasoning) that control the skills (such as organizing tasks, remembering details, managing time, and solving problems) required for goal-directed behavior.

Researchers have consistently found a strong relationship between healthy executive functions and good financial decision-making. Sound financial decision-making requires the ability to limit impulsive urges, plan ahead, and think abstractly, especially when it comes to being able to understand and predict the future consequences of a specific action taken today. The ability to organize, “connect the dots,” and control impulses may in fact be the most important cognitive functions underpinning good financial decision-making.

Source: Chris Heye, PhD, Retirement Income Institute

## Prevalence of Subjective Cognitive Decline in the U.S.

Figure 1: Adults 45 years of age and older with Subjective Cognitive Decline



Source: Centers for Disease Control and Prevention

## Data: Money lost due to exploitation of seniors

### 2019 Top Fraud Types by Total Dollars Lost (Ages 60 and over)



REPORTED DOLLAR LOSS

Sentinel fraud types classified as "unspecified" are excluded. The Investment: Advice, Seminars, Investment: Art/Gems/Rare Coins, Investment: Stock/Commodity Futures Trading and Investment (Other) fraud types are grouped as "Investments" for this visualization.

Source: *Consumer Affairs 2019*

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Older adults are swindled out of more than \$3 billion each year.

More than 3.5 million older adults are victims of financial exploitation each year.

Seniors targeted by fraudsters suffer an average loss of \$34,200.

Source: *Consumer Affairs 2022* [Elder Financial Abuse Statistics 2023: Common Scams & Frauds | ConsumerAffairs](#)

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Total Financial Assets: Americans over the age of 50 currently account for 77 percent of financial assets in the United States, according to the Securities Industry and Financial Markets Association (SIFMA).

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Americans age 70 and above have a net worth of nearly \$35 trillion, according to Federal Reserve data. Their wealth is equal to 157% of U.S. gross domestic product, more than double the proportion 30 years ago, federal data show.

*Source: Wall Street Journal 2021*

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Older Americans are one of the fastest-growing demographics in the country, with an average of 10,000 Americans turning 65 every day. Con artists tend to target older people, in part because they are more likely to have built up nest eggs, according to the FBI. And the U.S. Department of Justice estimates that \$3 billion is stolen or defrauded from millions of elderly Americans every year.

*Source: FINRA [Protecting Seniors From Financial Exploitation | FINRA.org](#)*

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The overwhelming majority of incidents of elder financial exploitation go unreported to authorities. For every documented case of elder financial exploitation, 44 went unreported according to a New York state study.

*Source: Stephen Deane, Office of Investor Advocate, SEC. [Elder Financial Exploitation White Paper \(sec.gov\)](#)*

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The Federal Trade Commission suggests seniors are 94% more likely to report fraud attempts if they haven't lost any money. This hesitancy to report lost money can be due to shame and older people not wanting to alert family members about an inability to manage their finances.

*Source: Consumer Affairs 2022 [Elder Financial Abuse Statistics 2023: Common Scams & Frauds | ConsumerAffairs](#)*

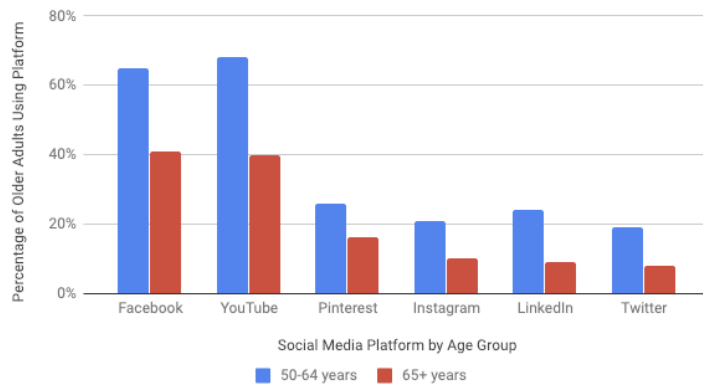
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# Social Media Use

## SOCIAL MEDIA USE BY SENIORS

What social media platforms do Seniors use? The simple answer is Facebook, YouTube, Pinterest, Instagram, LinkedIn and Twitter. Although the rankings are not equal. According to the Pew Institute in a study published in 2018, Facebook and Youtube are the top platforms used by older adults by a wide margin. The other four platforms of note are nearly equal in popularity. Here are the Pew data.

Social Media Use by Older Adults



Age Group	Facebook	YouTube	Pinterest	Instagram	LinkedIn	Twitter
50-64 years	65%	68%	26%	21%	24%	19%
65+ years	41%	40%	16%	10%	9%	8%

Facebook is still by far the most popular social platform for seniors.

Source: *Pew Research data via Senior Tech Club* [Social Media for Older Adults | Senior Tech Club](#)

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When the Center began tracking internet adoption in early 2000, just 14% of seniors were internet users. But today, 67% of adults ages 65 and older say they go online.

Today, 34% of Americans ages 65 and up say they use social networking sites like Facebook or Twitter. This represents a seven-point increase from 2013, when 27% of older adults reported using social media.

Younger seniors are more likely than their older counterparts to use social media. More than four-in-ten (45%) seniors under the age of 75 say they use social networking sites, compared with 20% of those ages 75 and older. Social networking use is also relatively

common among those who have at least some college experience and those whose annual household income is \$50,000 or more.

*Source: Pew Research 2017 [Technology use among seniors | Pew Research Center](#)*

**Testimony in Support of SB 2325**  
**North Dakota Securities Commissioner Karen Tyler**  
**House Industry, Business and Labor Committee**  
**March 7, 2023**

Good afternoon, Mr. Chairman and members of the Committee. I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2325 which creates a restitution assistance fund for certain victims of securities law violations.

This bill establishes the restitution fund, identifies that the revenue of the Department is the funding source for providing restitution to harmed investors, identifies the parameters for qualifying for this assistance, sets limits on the assistance provided, and creates the necessary authorities for the Commissioner to administer the fund.

To help frame the need for and the benefit of this additional investor protection mechanism, and how it enhances the existing enforcement authority of the Department, I would like to first share with you some information related to the

characteristics of our investment fraud investigations, review some data related to fraud and misconduct involving senior victims and then address specific conditions of the proposed fund.

When I was testifying before this committee this morning our agency pre-filed bill, I shared with you that our work to protect investors can be broken down into two categories:

- 1. regulating the capital formation process**
- 2. regulating the conduct of investment industry firms and professionals**

And while these are very distinct functions (the issuance of securities vs. the intermediation of securities transactions), what is common to both categories is the potential, the possibility, that fraud and misconduct can occur, and further, where fraud or misconduct is perpetrated, what is also common to both categories is that older investors are often the target.

For purposes of conveying our support of this bill, I will shift the focus - instead of the focusing on these two securities related functions, I want to focus on the person engaging in the fraud or misconduct, how this impacts the outcome of an investigation, and the likelihood of a successful resolution for the harmed

investor, which ties directly to the need and benefit of the proposed restitution assistance fund.

### **Registered Persons vs. Unregistered Persons and Financial Criminals**

If an investigation involves the conduct of a registered financial professional who works for a registered investment firm, the likelihood of a resolution that brings relief to the harmed investor is very high. Our securities laws provide strong enforcement mechanisms such as the potential for revocation of a firm or professional's registration, the ability to assess significant civil penalties per violation, and the ability to order the return of the investor's funds plus interest. These are authorities that currently exist in our securities act and they are exceedingly effective in resolving cases involving registered firms and professionals.

If, however, the violation involves an unregistered person with no affiliation to a brokerage firm or investment adviser firm, the likelihood of recovery of assets and a successful outcome for the harmed investor is substantially lower.

In those cases where recovery is unlikely, if not impossible, and the victim is a senior or vulnerable adult, this proposed restitution assistance fund will provide at least some level of relief.



There are a number of factors that converge to position seniors as a highly targeted cohort. This cohort is where the money is, this is where the potential for cognitive decline is most prevalent, this is where social isolation creates vulnerability, and this is where reluctance to report a violation is strongest, allowing for continuation of the fraud. Attached to my testimony is a document with a variety of study summaries and statistics that provide more detail on these targeting factors.

Overall this age cohort has accumulated the most wealth, but of course that wealth is not evenly distributed. Many seniors live on very modest, fixed incomes and have little savings. Seniors as a cohort are relentlessly targeted because of the potential for a big score or a series of smaller takes, and victimization by a financial criminal will hit some seniors much much harder than others.

According to a study recently released by NDSU and the ND Housing Finance Agency, the most significant population change we will see here in ND in the next few years is the “aging forward” of our baby boomer population, with a 24% growth rate in the number of people over age 65 occurring by 2025. We also have an increasing number of people aging in place, which on the one hand is a really great thing but on the other hand can increase a variety of risks associated

with isolation including the risk of fraud victimization. Currently 1/3 of people living alone in North Dakota are over the age of 65.

Data from our enforcement cases supports the findings of studies and research that indicates seniors are the most heavily targeted by financial fraud and exploitation.

In those cases where we are unable to secure the return of assets for a harmed investor through our existing enforcement authority, this proposed restitution assistance fund could provide some relief under the qualified circumstances. This bill is based on model legislation that was created from the best practices of a number of restitution assistance funds currently active in other states.

It provides for an application and qualification process, sets parameters for receiving and returning a payment, limits payments to the lesser \$50,000 or 50% of losses per qualified claimant, and sets certain discretionary authorities of the Commissioner.

The funding source is revenue generated by the Department – up to \$1 million per biennium. The Department will generate approximately \$23 million in the current biennium and our budget appropriation is \$3.3 million, making the

restitution appropriation a very manageable number, and in our view a very meaningful use of the Department's revenue.

23.1036.02000

FIRST ENGROSSMENT

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2325

Introduced by

Senators Lee, Barta, J. Roers

Representatives Beltz, Boschee, Schreiber-Beck

1 A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota  
2 Century Code, relating to the restitution assistance fund for victims of securities violations; to  
3 provide a continuing appropriation; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 10-04 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Restitution assistance fund - Continuing appropriation.**

8 1. As used in this section:

9 a. "Claimant" means an individual <sup>that</sup> who meets the definition of eligible adult under  
10 ~~section 10-04-08.5 and files an application for restitution assistance under this~~  
11 section. The term includes the named party, the executor of a named party, the  
12 heirs and assignees of a named party, or any other individual with lawful authority  
13 to act for or on behalf of the named party in a restitution award in a final order.

14 b. "Final order" means an order issued by the commissioner under this chapter or a  
15 final order issued by the court in a legal action initiated by the commissioner  
16 under this chapter.

17 c. "Securities violation" means a violation of any provision of this chapter, or any  
18 rule or order issued by the commissioner under this chapter.

19 ~~"Victim" means an individual who meets the definition of an eligible adult under~~  
20 ~~section 10-04-08.5 and is awarded restitution in a final order.~~

21 2. A special fund is established in the state treasury and is designated as the restitution  
22 assistance fund for <sup>individuals eligible for restitution</sup> eligible adult victims. The commissioner shall deposit up to one  
23 million dollars per biennium from the department's revenue into the fund. The moneys  
24 in the fund are appropriated on a continuing basis to the commissioner to provide

- 1            restitution assistance for <sup>individuals</sup> ~~victims~~ who have not received full restitution from a final  
2            order before the application for restitution assistance is due.
- 3            3. An individual is eligible for restitution assistance if the individual:
- 4            a. Is a resident of the state who is a victim of a securities violation committed in this  
5            state or other jurisdiction, including a foreign country, if the jurisdiction does not  
6            offer assistance substantially similar to the assistance offered under this section.
- 7            b. Is a nonresident who is a victim of a securities violation committed in this state if  
8            the nonresident's home state offers residents of this state substantially similar  
9            assistance as offered under this section.
- 10           c. Submits an application, in the manner prescribed by the commissioner, for  
11           restitution assistance within two years of the date of the final order, except the  
12           commissioner may grant an extension of time for submission of an application for  
13           restitution assistance upon a showing of good cause by the claimant.
- 14           4. The commissioner may award the lesser of fifty thousand dollars or fifty percent of the  
15           amount of unpaid restitution awarded in the final order to a claimant. An award of  
16           restitution assistance may be made only to one claimant per victim. The commissioner  
17           may waive any limitations on payment upon a showing of good cause.
- 18           5. The commissioner may not award restitution assistance if:
- 19           a. The <sup>individual</sup> ~~victim~~ sustained the monetary injury as a result of:
- 20                  (1) Participating or assisting in a securities violation; or
- 21                  (2) Attempting or committing a securities violation; or
- 22           b. The <sup>individual</sup> ~~victim~~ profited or would have profited from a securities violation.
- 23           6. A claimant convicted of any crime deemed relevant by the commissioner in connection  
24           to a claim made under this section shall forfeit any restitution assistance awarded to  
25           the claimant.
- 26           7. The commissioner may bring a civil action to recover funds awarded to a claimant  
27           convicted of any crime deemed relevant by the commissioner in connection with a  
28           claim under this section.
- 29           8. If the commissioner overturns a final order or a final order is overturned on appeal  
30           after restitution assistance has been made to a claimant, the commissioner may issue  
31           an order to recover the restitution assistance.

1       9. The department is subrogated to the rights of the claimant awarded restitution  
2       assistance. The subrogation rights are against the individual ordered to pay restitution  
3       to the <sup>claimant</sup> victim for the securities violation. In addition, the commissioner is entitled to a  
4       lien in the amount of the award on a recovery made by or on behalf of the <sup>claimant</sup> victim. The  
5       commissioner may recover the amount in a separate action or intervene in an action  
6       brought by or on behalf of the <sup>claimant</sup> victim.

7       10. A claimant shall refund to the commissioner any amount of restitution received if the  
8       combined total of the restitution assistance exceeds the restitution awarded in the final  
9       order. Any moneys recovered by the commissioner under subsections 7, 8, and 9 must  
10      be returned to the fund.

11      11. The commissioner may suspend payment of claims or prorate payment of claims until  
12      such a time the commissioner determines a sufficient balance has been restored to  
13      the fund if payment of restitution assistance would result in a fund balance below one  
14      hundred thousand dollars.

15      12. Restitution assistance awarded by the commissioner under this section is not subject  
16      to execution, attachment, garnishment, or other process, except those executions,  
17      attachments, garnishments, or other processes brought by or on behalf of the state.

18      13. The commissioner may adopt rules pursuant to chapter 28-32 to carry out this section.

19      **SECTION 2. APPLICATION.** Restitution assistance awards may be made under this Act  
20      only to victims awarded restitution in a final order issued on or after the effective date of this Act.