

2019 SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

SB 2179

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2179
1/14/2019
Job # 30723

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the prevention of financial exploitation; and to a financial institution's duty of confidentiality.

Minutes:

Att #1-6

Chairman Klein: Opened the hearing on SB 2179. All members were present.

Senator Judy Lee, District 13: See attachments #1 for testimony in support of the bill. **(See attachment #2 for proposed amendments to the bill).**

(6:05)Chairman Klein: Give us an example that you would use to explain this, how this happened and why we should do this?

Senator Lee: A few sessions ago, two sisters came to the human services committee. They were embarrassed and nervous to speak to the committee. Their parents needed help around the farmstead. A caregiver couple moved in and helped out the older parent couple. They helped around outside and inside the house. They became good friends with the caregiver couple. Then the lady of the farm couple passed away, and the gentleman was lonely and grief stricken and the relationship between him and the caregiver couple grew even closer. Especially between the lady, and I don't mean anything untoward. But he was in the house and she was in the house and she was very supportive. And gradually over a period of time, the daughters had recently discovered that all of the land and all of the liquid assets had been transferred to the names of the caregivers. It's a big deal. And they'd gone to the state's attorney and hoped that they could have something done, and they couldn't because he had not been declared incompetent. He really wasn't, he was affected by the circumstances obviously. There was nothing that they could do and it's all lost. The other one is a situation in which the evil brother ended up manipulating a circumstance in which several very expensive sports cars as well as all of the land and liquid assets were taken from the person who owned them and so he didn't have five bucks to buy a coke. And in addition kept his lifelong companion, a ladyfriend he'd had for a very long time, away from visiting with him which is another issue entirely, and there's another bill you'll be hearing on the floor before the session's over about process for that. But when we're talking over seven figures of stolen assets, and the value of other personal property that was taken, and this fellow had some

early dementia, but when he was warned by other people before they really restrained the ability of anyone to visit with him, that this was going on, he couldn't believe that his closest living relative could possibly do anything wrong. And in North Dakota, if you haven't been declared incompetent, you can do whatever you want with your money. If you want to give it all to Orville Roberts, my kids can't tell me I can't do that. I get that. But this is a little different circumstance when there is a vulnerability that meets the statute. And yeah, if I want to give it to the dog, I can do that.

Chairman Klein: And in this case who do you see as the gatekeeper to this?

Senator Lee: The bank or the brokerage, because this was before the brokerage language, the brokerage lender could have intervened when these transfers were taking place, and been able to have a hold on the property, that's really what this calls for, for the transaction. For a brief and appropriate period of time. The process is there, in the bill, so that it doesn't impede the right to have a legitimate transfer. My dad was a bank director and a similar thing happened, because there was an older brother and sister, with a lot of money because they never spent any. And elderly, and they were living not only modestly but they weren't cleaning or anything anymore. And at a bank directors meeting he noticed that there were regular checks that were going out to this one person whose name was unfamiliar, which isn't odd, but in a small town you kind of watch this stuff. And it turns out someone was pretending to be an insurance agent and getting, ya know it might be \$300 now, it might be \$400 to weeks from now. Stopping by an visiting, he was friendly, and so a little more informally, they were able to help set things up in a little better way and take care of these people better to. But that stuff's going on all the time. So we recognize the need for rights to privacy, we recognize the needs for any of us to be able to transfer assets as we might choose, but in these cases, the intent of the owner was not necessarily the way it went and unscrupulous people and unfortunately, often it is a family member. It's just unbelievable to me.

Senator Piepkorn: I recall several of these things last time. In the case of the first one, were they a couple off the street, did they have any credentials? Were they licensed by any agency to provide this caretaking?

Senator Lee: They weren't just sort of off the street, they were a couple that may have, the family was looking for somebody to help. Having gone through that with my dad when he was having some early memory issues, and looking for somebody in a small community to come in and do a little help during the day, planning to pay them, we couldn't find anybody. And those of you who have been on Human Services, when we're talking about providing home and community based services, but where are you gonna find them in a frontier county? And this place was one of the most rural areas, so they had found a couple who was willing to do the work. It may or may not have been somebody they knew, but there was no licensing, you don't have to be licensed to be paid to go and help somebody out. And it was one of those, you know we kind of trust each other more in North Dakota, and you just can't imagine anybody being so awful that they would take advantage of an older couple like this.

Senator Piepkorn: This illustrates the difference between a big town and a rural area because in a bigger city there are organizations and people that are authorized or credentialed, and licensed to provide that kind of care. And vetted, have backgrounds. It just illustrates the more vulnerable people can be in the rural settings.

Senator Lee: I agree that it's a bigger challenge in finding people in the rural areas. But there are a lot of people in the larger towns, that also are just looking for someone you know. Maybe they are notifying in their churches or maybe they're putting an ad in the paper or maybe they're answering an ad in the paper.

Chairman Klein: Evil brothers are sprinkled everywhere; so we face them wherever we're at whether its rural or you know. I would suggest that in the rural community you know your neighbors but you also know the ones that are taking advantage and say you know that just ain't right. But what do you do about it, the children are glad somebody is taking care of them. I've gone through that with trying to be the holder of the grocery bill till the end of the month. And then the family comes and pays and how come she's buying this and what are they feeding, and I'm like I'm just holding the check so you don't have to pay for it until the end of the month. But yet, trying to be that mediator is difficult but you know those folks and so anyway.

Rick Clayburgh, President/CEO, North Dakota Bankers Association: Testified in support of the bill. I'm handing out two documents for the committee. I do want to just tell you that in the past, the NDBA has been opposed to mandatory reporting requirements. And with Senator Lee's bill here now, SB 2179, it's an actually voluntary. This first document I handed out (Attachment #3), starts at chapter 6-08.1, we actually have code in North Dakota that deals. There are three sections of code, in the banking statute, in the vulnerable adult, and also in the criminal code on how a bank reports suspicious activity now on financial exploitation. The bill itself, and in talking to Senator Lee, we discovered that the bill is taken after, modeled after, the Tennessee law on financial exploitation. The bill was drafted in Tennessee by the Tennessee Bankers Association, and they worked with their bankers, they worked with folks in the community on coming together and putting a piece of legislation together that would work in Tennessee. And it's almost verbatim here. And as we look at it, our bankers have reviewed the bill over the weekend, during the last few days and for the most part, are supportive of what the bill is doing because, again, its voluntary but it provides some more specific framework on how the bank handles issues whether it's on a hold or dealing with the power of attorney and there's a little more clarity to the legislation. On the handout that I've given you on 2179 (Attachment #4), you'll see on the top I did not put it into amendment form but you can see where it says suggested amendments. **(See attached for suggested changes stated in testimony).**

20:40 Senator Piepkorn: What would be the circumstances where a young teller would be put into this position?

Rick: Person coming into the bank to cash a check. Make a deposit or a withdrawal. Could be anything.

Chairman Klein: So amongst the tellers, they might say well that's strange, why would they be doing this. Is that where that good faith, um, they would then go on to tell somebody inside that something doesn't look kosher here?

Rick: Correct. And the terminology with good faith, has to do with liability, there's immunity from liability for acting in good faith or acting reasonably. But on the good faith side, there

are times, and Senator Lee's second example was a very good example of that issues, the banker caught there was something not right with that transaction. On that first issue on the conveyance of real property and all those things, that would've never been caught cause that's not at the bank level. That would've be at an attorney level or some other area in our economy. And in a small town, you know people talk, people know what goes on in a community, but there may be a situation where a widower who has been going to the café for 30 years and the waitress at the café is probably the nicest person to him and he's in total control of his faculties. According to the definition here he's 65 and older but maybe he's not considered vulnerable, he wants to give some money to this person. Should that be the seventeen year old teller making that determination? That this isn't looking right. So that issue of that good faith is more, in good faith, the bank is trying to ensure it's not happening. Cause everyone at the bank probably is aware that kids in the family never see him, don't talk to him ya know except there just worried about what's going to be in the estate at the end of his life. And this individual is taking time and is important in his life. So there are fact patterns on both sides of this issue, we just ensuring that the bank is operating in good faith to try to protect their customer. But we don't necessarily want to put a reasonable standard because reasonable at one bank might be a different issue. And good faith is the current terminology in our current law. **(See Attachment #4 for continued changes).**

(23:51)Chairman Klein: And Rick this is after we implement the amendments, this and your changes will make it extremely good?

Rick: Yes, we've signed on to both. We've talked with Mr. Grossman and we like the amendments. It's more palatable to us, you'll see that I've actually signed in support of the bill. We've been hearing back from our bankers over the last few days that they like it and originally we oppose any mandatory because that causes issues with our regulators, both state and federal there's a lot of things that come into play that mandatory reporting can really be a problem. I would ask a question of the committee, what we're not certain of, is we do have three provisions of code that deal with financial exploitation and the role that a financial institution plays, how is all that melded together? Do we keep those? Cause this bill does not have any repealers in it. Its just starting new sections. How is all that gonna work together? If we get this as cleaned up as we can we'd like to do it in the senate, but we certainly if it goes over to the house we can do further housekeeping to clean it up but there could be some confusion.

Chairman Klein: We're gonna do what we can to work this out the next week or two and go from there. And we want to make sure everybody's on board, Senator Lee. You said palatable, that doesn't mean you really like it.

Rick: I told you I signed in as supporting it, that will be our position. It's not officially our position yet cause I still have to take it to our legislative committee but our bankers like it. We've heard from a couple of bankers that do believe that it's a little more cumbersome but mostly they've said they like it better than the current statute.

(26:48)Parrell Grossman: See attachment #5 for testimony in support of the bill.

(37:40)Chairman Klein: So with your amendments and the Clayburgh notes, you've had an opportunity to see those notes and you're okay with them?

Parrell: I just reviewed them very briefly but as he described them I think I'm okay, if I had some concerns I would immediately bring it to the committee's attention. We're on board with the idea of good faith.

Chairman Klein: So an accommodation of your amendments and his amendments we'll get this thing pretty good? Unless there's other comments.

Parrell: I would say better than looking pretty good. I just want to address some of the comments made earlier. We, a colleague and I, spent hours this morning perusing the statutes, while their definitely are some similarities. There's nothing in any of those statute that are inconsistent. I'm not saying that with hours of work we couldn't tweak it more but, there appears to be no overlap. If that's what the committee wants to do, I don't recommend it, I don't think it's necessary. One of that statutes mentioned was 32-03.55 which deals with immunity for report of suspected exploitation of disabled or vulnerable adults, it talks about a report of suspected exploitation of a disabled adult or a vulnerable elderly adult, it doesn't mention anything about an eligible adult which under this legislation if enacted would include 65 years and older. In fact it doesn't include any definitions so you would need some definitions, instead I think everything you need to know and everything we need to know or the banks would need to know would be contained in the new language in the proposed legislation. The other legislation mentioned was 50-25.2 that refers to vulnerable adult protection services. That statute referenced abuse, primarily, there's one reference or so to financial exploitation and financial exploitation, it's much more narrower than what we've captured in the new law and its certainly doesn't include the addition that makes this whole idea and clarifies what a wrongful taking is. There is no definition of eligible adult so again wouldn't capture that person 65 or older. It uses a more narrow definition of vulnerable adult, and like for instance I should say in 50-25.203 is uses a more narrow definition of vulnerable adult and it addresses when a vulnerable adult has been subject to abuse or neglect that does not include financial exploitation. So with that I would just say we're really completely comfortable. One other thing I should point out is some of the proposed changes in 608.1-03 the duty of confidentiality, I think probably that the financial exploitation definition is covered in there. I guess the old subsection 7 made it clear under what circumstances that could be included.

Chairman Klein: We have what we believe is amendments, there's clarification, I think there's direction now. And I know Senator Lee will work with you and the banker's groups to refine and make sure Mr. Clayburgh's issues have been addressed.

Senator Piepkorn: How will this bring us in comparison to other states? Are we gonna exceed other states? Or is it just going to bring us up to where other places had already been operating?

Parrell: I couldn't say, I think it would position us well into the higher levels of protections for those kind of categories that relate to consumer fraud and I believe it will do the same for those kinds of potential fraud from caregiver, family members, strangers, I'm sorry that I can't give you a specific answer but we will be with Tennessee anyways.

(43:58)Mike Chausee, Associate State Director for Advocacy with AARP North Dakota: see attachment #6 for testimony in support of the bill.

(46:58) to answer Senator Piepkorn: question about other states, When we see these bills we send them up and see what we hear back from the guys in DC, and they're pleased with this one. The only suggestions we heard were that there were task forces in other states working on this and then increased training.

Chairman Klein: Well my neighbor lady, you know these troubled youths, her grandson called and asked her for bail money and the older lady said well I thought you were working and she said no no I'm in jail grandma. And then there's an old bachelor down the road who never married and when they said well your grandson's in jail and he said well keep going, sucking them in, and then he said well finally I've never been married. You know if I have a grandson I certainly don't know anything about him and then the guy hung up. But yes there's a lot of issues out there.

Jeff Olson, Credit Union Association of the Dakotas/neutral: 2179 is legislation with great intentions. Credit union members are owners and we care about their financial wellbeing and financial health. We are not here to oppose any exploitation laws, but this bill as presented is confusing and clarity is key, we do appreciate that we're removing the liability and exposure for credit unions. We're already doing many things to prevent exploitation of our members, the bill as introduced requires some additional reporting and the timing requirements holding the ten day requirements is kind of a concern and I did bring someone that can address that that deals with it on a practical sense so I'll be brief in my comments. But we're also pleased that the term reasonable is removed, and we haven't seen the amendments don't know what's in it so I won't speak to that. But again, it would've been nice if the senator had reached out to us ahead of time, that when we're dealing with exploitation, that we all could've gotten together ahead of time and gotten this all worked out. As far as the ten-day timing I'd like to turn it over to an expert witness, if that's okay with the chairman.

Chairman Klein: Yeah, that'll be okay, I'd ask that you'd work with the other stakeholders so that when we hear the amendments, we're sure everybody is gonna be on the same page.

Jon Griffin, Risk Manager, Capital Credit Union/neutral: Capital Credit Union has 30,000 members across North Dakota. We have branches in Bismarck, Mandan, Hazen, Beulah, New Salem, and Fargo. Mr. Grossman touched on the majority of the examples I was going to share, but I can tell you that this does happen. We run into it on a monthly basis. There has been a major uptick in the last few years. A couple of things that I have concerns about, as time's gone on we've changed our practice with identifying this. In the past we would allow the transactions to go through, we would have the conversations with the members at the time to try to talk them out of sending the money or completing the transaction. We have taken on a hard and fast approach, that basically says if we've identified it and believe it to be elder financial abuse or potential fraud, we will cut that transaction off completely. Obviously those exchanges are not fun, and we've had a lot of people worked up and we've actually had people close out accounts. But in good conscience we're working and trying hard to work on behalf of our members. With that being said, under page 4 number six, the way that that states and the way that I read it, that's basically telling us that if we stop that transaction, we have to let that transaction go through with the lesser of those three items on

there. The ten-day period which I don't believe ten days long enough. Reasonable believe did not result in an exploitation. And then number three if we've made them aware of the risks, and a lot of times we do have those conversations and we talk to the members about the risk behind it, and they still want to send that money and complete that transaction. Another piece is the liability one, I really appreciate allowing in the century code that we can talk to family members, my concern is from the North Dakota century code stand point, if we put that in there that's great, but we also have to follow federal regulations. And Gramm, Leach, Bliley is very specific about what we can do with privacy and the way that I read this bill we could not reach out to family members based on that privacy point. The last piece I would like to make is on that timing piece, we have to let North Dakota health and human services, we've got that ten-day period in there. My feeling would be that the investigation and all that is going to take longer than that ten days. In my mind that investigation is done as soon as we have determined it to be a fraudulent transaction or potential elder financial abuse.

Chairman Klein: This sounds favorable but with some modifications?

Jon: Yes, absolutely. Not opposed at all.

Chairman Klein: I think we've all, and the one that comes to mind is the story of the old guy who never married and who grew close to the cashier at the bank and they became very good friends and they would have lunch together and after he passed away, wouldn't you know the cashier at the bank was the heiress. And there were cousins and brothers but no direct family. Anyway I thought that was interesting. Alright well you've heard what I've asked and work with Senator Lee because she'll want to approve whatever we pass anyways. And the couple of ideas that the credit unions mentioned maybe you can work with that. And with that I will close the hearing on 2179.

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2179
1/23/2019
Job #31278

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the prevention of financial exploitation; and to a financial institution's duty of confidentiality.

Minutes:

Att. #1

Chairman Klein: Opened the committee work session on SB 2179

Parrell Grossman, Director, Consumer Protection and AntiTrust Division, Office of Attorney General: discussed the amendment put together by he and Senator Judy Lee. See attachment #1 for necessary changes. There were no other changes beside those we had discussed by the committee.

(6:25)Chairman Klein: And the bankers like this? You think we ironed this out?

Parrell: Correct. She does like this. And happy to have the bankers' support.

Senator Kreun: Out the two pages of amendments, you said page 4 line 4 was a major change and what else?

Parrell: Page 5 lines 14-15 which relates to the sharing of information with family members. Otherwise just a lot of changes from a reasonable cause to a good faith belief. Which makes much more sense in terms of the duties of financial institutions.

Senator Kreun: Move a do pass to adopt the amendment.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Kreun: Move a Do Pass as Amended.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Kreun will carry the bill.

January 23, 2019

SK
1082

PROPOSED AMENDMENTS TO SENATE BILL NO. 2179

Page 2, line 16, remove the first "or"

Page 2, line 16, replace the second "or" with an underscored comma

Page 2, line 16, after "credit" insert ", or safe deposit box"

Page 2, line 21, after the underscored period insert "The term includes defrauding an eligible adult."

Page 3, line 5, replace "reasonable cause" with "a good-faith belief"

Page 3, line 25, replace "reasonable cause" with "a good-faith belief"

Page 4, line 4, remove "If a financial service provider refuses to conduct a financial transaction or hold a"

Page 4, remove lines 5 through 23

Page 4, line 24, remove "9."

Page 4, line 24, after "employee" insert ", officer, or director"

Page 4, line 29, replace "reasonable" with "good-faith"

Page 4, line 29, after "belief" insert "financial exploitation occurred, was attempted, or is being attempted"

Page 5, line 1, after the bold underscored period insert: **"Reporting to a law enforcement agency or the department of human services - Immunity."**

1. If a financial service provider, or an employee, officer, or director of a financial service provider has a good-faith belief to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider, or an employee, officer, or director of a financial service provider may report the information to a law enforcement agency or the department of human services.
2. This section does not impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to a law enforcement agency or the department of human services.
3. A financial service provider, or an employee, officer, or director of a financial service provider is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section if the determination is made based on a good-faith belief financial exploitation occurred, was attempted, or is being attempted.

6-08.5-04."

Page 5, line 7, replace "reasonable cause" with "a good-faith belief"

Page 5, remove lines 14 and 15

Page 5, line 26, after "employee" insert ", officer, or director"

Page 5, line 29, replace "reasonable" with "a good-faith"

Page 5, line 30, replace "or" with an underscored comma

Page 5, line 30, after "attempted" insert ", or is being attempted"

Page 6, line 5, replace "reasonable cause" with "a good-faith belief"

Page 6, line 8, after "employee" insert ", officer, or director"

Page 6, line 11, replace "upon reasonable" with "or a good-faith"

Page 6, line 12, replace "or" with an underscored comma

Page 6, line 12, after "attempted" insert "or was being attempted"

Renumber accordingly

Date: 1/23
Roll Call Vote #: _____

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2179**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 19.0309.01003

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Kreun Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 16 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2179: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2179 was placed on the Sixth order on the calendar.

Page 2, line 16, remove the first "or"

Page 2, line 16, replace the second "or" with an underscored comma

Page 2, line 16, after "credit" insert ", or safe deposit box"

Page 2, line 21, after the underscored period insert "The term includes defrauding an eligible adult."

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Page 3, line 25, replace "reasonable cause" with "a good-faith belief"

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Page 4, line 24, remove "9."

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3. A financial service provider, or an employee, officer, or director of a financial service provider is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section if the determination is made based on a good-faith belief financial exploitation occurred, was attempted, or is being attempted.

6-08.5-04."

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Page 5, remove lines 14 and 15

Page 5, line 26, after "employee" insert ", officer, or director"

Page 5, line 29, replace "reasonable" with "a good-faith"

Page 5, line 30, replace "or" with an underscored comma

Page 5, line 30, after "attempted" insert ", or is being attempted"

Page 6, line 5, replace "reasonable cause" with "a good-faith belief"

Page 6, line 8, after "employee" insert ", officer, or director"

Page 6, line 11, replace "upon reasonable" with "or a good-faith"

Page 6, line 12, replace "or" with an underscored comma

Page 6, line 12, after "attempted" insert "or was being attempted"

Renumber accordingly

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2179

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2179
3/11/2019
33539

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Prevention of financial exploitation & financial institution's duty of confidentiality.

Minutes:

Attachment 1, 2, 3, 4

Chairman Keiser: Opens the hearing on SB 2179.

Sen Judy Lee~District 13: Attachment 1.

5:10

Rep D Ruby: Do you know if the bank has the ability to question some of the transactions?

Sen J Lee: I'll let others answer that but I do know that they have not had a process in place.

Rick Clayburgh~President & CEO of the ND Bankers Association: Attachment 2.

12:50

Rep Laning: I assume you ran these amendments past Sen J Lee?

Rick Clayburgh: Yes I have & also Parrell Grossman.

Parrell Grossman~Director-Consumer Protection & Antitrust Division: Attachment 3.

22:50

Rep D Ruby: What would this allow for the banks or your department for out of state scams?

Parrell Grossman: As the bank employee notices this, they have the opportunity to consult with their management & say we need to get involved to help the victim.

Rep D Ruby: Could the bank have been at risk under current law informing the family?

Parrell Grossman: That's the relationship between the banker & customer. Yes, they could have faced some liability for sharing with a family member. We removed that provision.

Barry Haugen~Independent Community Banks of ND: This is important; it is not a mandate & there's immunity. The feedback I receive from our member banks was that provides a road map & clarity that wasn't there before. The non-mandate & immunity are very important. Having the front line is helping in dealing with fraud. I urge a do pass on the bill & the amendment.

Chairman Keiser: Anyone else here to testify on SB 2179 in support, opposition, neutral? Closes the hearing. What are the wishes of the committee?

Rep Bosch: Moves the amendment.

Vice Chairman Lefor: Second.

Chairman Keiser: Further questions?

Voice Vote ~ motion carried.

Chairman Keiser: The amendment is on the bill.

Rep Bosch: Move a Do Pass as Amended.

Vice Chairman Lefor: Second.

Chairman Keiser: The greatest financial exploitation going on today is through the mail. Seniors are getting asked for contributions & unfortunately, they are legitimate. They start writing out the \$5 & \$10 checks & at the end of the month, they spent money they didn't have.

Rep P Anderson: I agree with you.

Roll call was taken on SB 2179 for a Do Pass as Amended with 10 yes, 0 no, 4 absent & Rep Bosch is the carrier.

Mike Chaussee~Associate State Director for Advocacy with AARP ND: Attachment 4.

March 11, 2019

DO 3/11/19

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2179

Page 2, line 30, remove "or"

Page 2, line 31, replace the second underscored period with ": or

f. A request to designate or change the designation of a beneficiary to receive any property, benefit, or contract right for an eligible adult."

Page 5, after line 7, insert:

"c. An attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult."

Renumber accordingly

Date: Mar 11, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2179

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description:

ND Banker's Association amendment
page 2, lines 30 + 31 + page 5 - line 7

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- _____

Motion Made by Rep Bosch Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep D Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment

voice vote - motion carried

Date: Mar 11, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2179

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Refer to Appropriations
 Place on Consent Calendar

Other Actions

- Reconsider _____

Motion Made by Rep Bosch Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	AB	
Vice Chairman Lefor	X		Rep Richter	AB	
Rep Bosch	X		Rep D Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	AB		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	AB		Rep M Nelson	X	

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep Bosh

REPORT OF STANDING COMMITTEE

SB 2179, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2179 was placed on the Sixth order on the calendar.

Page 2, line 30, remove "or"

Page 2, line 31, replace the second underscored period with "; or

- f. A request to designate or change the designation of a beneficiary to receive any property, benefit, or contract right for an eligible adult."

Page 5, after line 7, insert:

- "c. An attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult."

Renumber accordingly

2019 TESTIMONY

SB 2179

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(For Lee, Judy)

Scratch Pad for: SB 2179

I am Senator Judy Lee and I appear before you today to introduce SB 2179.

We have seen increasing examples of financial abuse of vulnerable adults in which property and liquid assets have been stolen. Sometimes it is caregivers, sometimes family members, and sometimes unscrupulous strangers who sell insurance and other products and services who coerce people to transfer their assets to them or to write checks for large sums.

Last session Karen Tyler, the Securities Commissioner, came to our Human Services committee during a hearing on financial abuse of vulnerable adults to tell us that the securities industry had just adopted model legislation which laid out a procedure for brokers and others to report suspicious transfers of wealth. We were so glad that it had come about during the session, and we passed that legislation to help protect owners of stocks, bonds, mutual funds, etc., but there was no provision for banks included in that.

Sb 2179 creates a process for banks to provide the same protection of their customers' assets by putting in place protections for the customers' rights as well as for the bank employees who act in good faith.

You may note on page 1 Line 24 and page 2 that it is not a duty, although I might like to see it be mandatory, for a financial institution to investigate a suspicious incident. In Subsection 8, it spells out that releasing customer's information does not violate the prohibition on disclosure.

Section 2 contains the definitions, and you can see in Sub. 2 that an "eligible adult" is one who is at least 65 years of age or a vulnerable adult as defined in statute. Subsection 5 spells out the transactions to which this applies.

Section 6 adds language about reasonable cause and the conditions under which a financial service provider can put a hold on the transaction or account.

Subsection 4 discusses notice to appropriate parties.

Sub. 6 sets the conditions for holding, including time of 10 business days, as well as notice to appropriate parties.

Sub. 7 enables a financial service provider to extend the time, if it reasonably believes that more time is needed to avoid exploitation.

Sub. 8 states that a court may order a time extension during which the hold is in place.

Sub. 9 protects bank employees from liability if they acted on a reasonable belief that it was necessary to hold the transaction. There will be amendments presented which will change this a bit,

Page 5 provides for a list of people who can be contacted with information about the hold. The bank need not contact an individual, and the eligible adult may provide names of people to contact.

Immunity is discussed in on page 6.

There have been discussions with Mr. Parrell Grossman from the Attorney General's office Consumer Protection division as well as with Mr. Rick Clayburgh with the ND Bankers Association, and I appreciate their input and enthusiasm for trying to stop the exploitation that continues to take place.

There are amendments which I consider friendly which have been suggested by both gentlemen, and we agree that the bill is improved with the changes they have recommended.

Of course, there may be other suggested amendments from people who appear before you today, and I am confident that, together, we can put in place the protection necessary for our neighbors and family members who have or who may encounter these circumstances. With the help of law enforcement and the financial institutions, coupled with the legislation already in place for brokerages, there will be more protection "up front" to recognize and investigate suspicious incidents occurring with customers' assets.

I encourage the IB&L committee to view this bill positively and make it the best it can be.

January 14, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2179

Page 2, line 21, after "party" insert ", and includes defrauding an eligible adult"

Page 4, line 29, after "belief" insert "financial exploitation occurred, was attempted, or is being attempted"

Page 5, line 1, after "6-08.5-03." insert "Reporting to a law enforcement agency or the department of human services - Immunity."

If a financial service provider has a good faith basis to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider may report the information to a law enforcement agency or the department of human services. This section may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to a law enforcement agency or the department of human services. A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section and for actions taken in furtherance of that determination if the determination is made based on a good faith belief financial exploitation occurred, was attempted, or is being attempted.

6-08-04."

Page 5, line 30, replace "or" with an underscored comma

Page 5, line 30, after "attempted" insert ", or is being attempted"

Page 6, line 3, replace "6-08.5-04" with "6-08.5-05"

Page 6, line 12, replace "or" with an underscored comma

Page 6, line 12, after "attempted" insert ", or is being attempted"

Renumber accordingly

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CHAPTER 6-08.1
DISCLOSURE OF CUSTOMER INFORMATION

6-08.1-01. Definitions.

As used in this chapter:

1. "Customer" means any person that is a resident of or is domiciled in this state and which has transacted or is transacting business with or has used or is using the services of a financial institution, or for which a financial institution has acted as a fiduciary with respect to trust property.
2. "Customer information" means either of the following:
 - a. Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.
 - b. Any information derived from a record described in this subsection.
3. "Financial institution" means any organization that is physically located in the state which is authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:
 - a. The federal deposit insurance corporation.
 - b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of financial institutions.
 - g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

6-08.1-02. Exemptions.

This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in the examination of any customer information by or the furnishing of customer information to any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.
3. The publication of data derived from customer information if the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
 - a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.

- b. The amount of any financing or security referenced in subdivision a.
- c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
- d. The program under which any financing or security referenced in subdivision a was made.
- e. Recipient reports and grantor reports as required under chapter 54-60.1.
8. The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota mediation service.
11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 6-08.1-10.
13. A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

6-08.1-03. Duty of confidentiality.

A financial institution may not disclose customer information to any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the agriculture commissioner that a financial institution has notified a customer of the availability of the North Dakota mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.
7. For purposes of reporting suspected exploitation of an eligible adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of an eligible adult or to make a report to a governmental agency or law enforcement agency.

6-08.1-03.1. Agricultural and commercial accounts.

Disapproved by R.M. June 11, 2002, S.L. 2003, ch. 575.

6-08.1-04. Consent.

1. No consent or waiver shall be required as a condition of doing business with any financial institution, and any consent or waiver obtained from a customer as a condition of doing business with a financial institution shall not be deemed a consent of the customer for the purpose of this chapter.
2. A valid consent must be in writing and signed by the customer. In consenting to disclosure of customer information, a customer may specify any of the following:
 - a. The time during which such consent will operate.
 - b. The customer information to be disclosed.
 - c. The persons, governmental agencies, or law enforcement agencies to which disclosure may be made.

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6-08.1-05. Government access.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this chapter.
 - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if there is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution.

6-08.1-06. Suspicion of unlawful conduct.

1. Nothing in this chapter precludes a financial institution from initiating contact with, and thereafter communicating with and disclosing customer information to, a law enforcement agency when the financial institution reasonably believes that the customer about whom such information pertains:
 - a. Is engaged in unlawful activity; or
 - b. Is defrauding the financial institution.
2. Conviction of the customer or admission by the customer shall be conclusive of the reasonableness of the disclosure for purposes of this section.
3. The burden is on the financial institution to show that at the time the disclosure was made, the disclosure was reasonable for the purposes of this section.

6-08.1-07. Cost reimbursement.

Any governmental agency, law enforcement agency, or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. A financial institution must deliver the customer information sought as soon as reasonably possible notwithstanding any dispute concerning the amount of reimbursement due under this section. A separate action may be maintained by the financial institution against the governmental agency, law enforcement agency, or person requesting access for recovery of reasonable reimbursement. The financial institution may not charge the state auditor for customer information requested when performing an audit; however, the financial institution may charge the entity being audited by the state auditor for the information requested.

6-08.1-08. Liability.

1. A financial institution, governmental agency, law enforcement agency, or any other person is liable to the customer for intentional violations of this chapter in an amount equal to the greater of the following:
 - a. One thousand dollars.
 - b. Actual damages caused by the disclosure of the customer information.
2. Any financial institution, governmental agency, law enforcement agency, or other person that takes any action pursuant to this chapter, relying in good faith on any provision of this chapter, may not be held liable to any person for its actions.

6-08.1-09. Joint marketing agreements - Consent.

A financial institution must have a customer's consent before the financial institution may disclose the customer's information to a nonaffiliated third party under a joint marketing agreement as provided under section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)].

6-08.1-10. Rules.

The state banking board and the state credit union board shall adopt rules to implement subsection 12 of section 6-08.1-02. The rules must provide at least as much customer protection as would be provided in the case of disclosure of information under circumstances in which there has been an opt-out election under title V of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436].

CHAPTER 50-25.2
VULNERABLE ADULT PROTECTION SERVICES

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50-25.2-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.
2. "Adult" includes a minor emancipated by marriage.
3. "Adult protective services" means remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:
 - a. Receiving, evaluating, and assessing reports of alleged abuse or neglect;
 - b. Arranging for and coordinating the provision of essential services;
 - c. Providing case management and counseling for the purposes of planning and providing social and other services needed by vulnerable adults;
 - d. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;
 - e. Monitoring the delivery of services to vulnerable adults and making progress assessments; and
 - f. Arranging for or providing, and coordinating, other services consistent with this chapter.
4. "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
5. "Department" means the department of human services.
6. "Essential services" means those services necessary to maintain and safeguard the physical and mental health of a vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision.
7. "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
8. "Least restrictive alternative" means adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services.
9. "Living independently" includes using the telephone, shopping, preparing food, housekeeping, and administering medications.
10. "Mental anguish" means psychological or emotional damage that requires medical treatment or care or is characterized by behavioral change or physical symptoms.
11. "Neglect" means the failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.

- 12. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.
- 13. "Self-care" includes maintaining personal hygiene, eating, and dressing.
- 14. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
- 15. "Substantial functional impairment" means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.
- 16. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.
- 17. "Vulnerable adult" means an adult who has a substantial mental or functional impairment.
- 18. "Willfully" means willfully as defined in section 12.1-02-02.

50-25.2-02. Adult protective services program - Rules.

The department, with the advice and cooperation of county social service boards, shall develop, administer, and cause to be implemented a program of protective services for vulnerable adults consistent with this chapter. In developing and administering the program, the department, within the limits of legislative appropriation, shall allocate and distribute funds for the purpose of providing adult protective services. All law enforcement agencies, courts of competent jurisdiction, and appropriate state and local agencies shall cooperate in the implementation and enforcement of this chapter. The department may adopt rules in accordance with chapter 28-32 for the purpose of implementing the provisions of this chapter.

50-25.2-03. Reporting of abuse or neglect - Method of reporting.

- 1. Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy, or caregiver having knowledge a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency if the knowledge is derived from information received by that individual in that individual's official or professional capacity. A member of the clergy, however, is not required to report the information if the knowledge is derived from information received in the capacity of spiritual adviser. For purposes of this subsection, "medical or mental health professional or personnel" means a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, tier 1 through tier 4 mental health professional as defined under section 25-01-01, emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult.
- 2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this chapter.
- 3. Any person not required to report under subsection 1 who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.

4. An individual required to report under subsection 1 shall make an oral or written report and a person voluntarily reporting under subsection 2 may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:
- a. The name, age, and residence address of the alleged vulnerable adult;
 - b. The name and residence address of the caregiver, if any;
 - c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;
 - d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
 - e. Any other information in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect and the identity of the individual responsible for the alleged abuse or neglect.

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50-25.2-04. Referral of complaints concerning long-term care facilities.

Any report received by the department or the department's designee under section 50-25.2-03 complaining of any administrative action, as defined in section 50-10.1-01, that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or a person who was discharged from a long-term care facility within nine months of the complaint, must be referred to the state long-term care ombudsman for investigation pursuant to chapter 50-10.1.

50-25.2-05. Evaluation and assessment - Participation by law enforcement agencies - Entry.

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 50-25.2-03, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
 - a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other person who may have knowledge of the circumstances surrounding the report;
 - b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
 - c. Have access to all records of the vulnerable adult:
 - (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; or
 - (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is a person with respect to whom a report was received by the department or the department's designee; and
 - d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the agency of the protection and advocacy project, or private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult.
2. If a report alleges, or circumstances surrounding the report indicate, a violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the department or the department's designee shall notify the appropriate law enforcement agency. In such a case, the law enforcement agency may investigate the allegations in the report, take immediate steps if necessary to protect the vulnerable adult, and institute legal proceedings if appropriate. The law enforcement agency shall notify the department or the department's designee if such

action is taken. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct. In all other cases of alleged abuse or neglect, the department or the department's designee may request assistance in an evaluation or the provision of other adult protective services from an appropriate law enforcement agency if necessary under the circumstances.

3. If the alleged vulnerable adult, or the caregiver, does not consent to an evaluation or investigation, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse or neglect has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent danger of serious physical injury or death.

50-25.2-06. Provision of adult protective services.

If the department or the department's designee determines that a vulnerable adult demonstrates a need for adult protective services, the department or the department's designee shall provide, or arrange for the provision of, adult protective services, provided the vulnerable adult consents to and accepts the services.

50-25.2-07. Refusal or inability to accept adult protective services - Department alternatives.

If a vulnerable adult who is subject to abuse or neglect is unable to consent and accept, or the caregiver refuses, adult protective services determined by the department or the department's designee to be necessary under this chapter, the department or the department's designee may pursue any administrative, legal, and other remedies authorized by law which are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further abuse or neglect. The state's attorney of the county in which the vulnerable adult resides or is located shall assist the department or the department's designee, upon request, in pursuing an appropriate remedy. Available remedies include seeking:

1. The appointment of a guardian under chapter 30.1-28 or a conservator under chapter 30.1-29;
2. A restraining order or other court order necessary under the circumstances;
3. The removal of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to sections 30.1-28-07 and 30.1-29-15;
4. The provision of appropriate treatment under chapter 25-03.1;
5. The criminal prosecution of the individual responsible for the abuse or neglect; and
6. Any other available administrative, legal, or other remedies on behalf of the vulnerable adult.

50-25.2-08. Cost of adult protective services.

The vulnerable adult is responsible for the costs of providing adult protective services, except the receipt, evaluation, and assessment of reports of suspected abuse or neglect pursuant to subdivision a of subsection 3 of section 50-25.2-01, if the department or the department's designee determines, based on standards set by the department, that the vulnerable adult is financially capable of paying for the protective services received either through the vulnerable adult's own income or resources or other programs for which the vulnerable adult may be eligible. The department or the department's designee is not responsible for the cost of providing adult protective services unless the provision of the services is specifically provided by law and funding exists to provide the services.

50-25.2-09. Immunity from liability.

The following persons are immune from any civil or criminal liability that otherwise might result from the person's actions taken pursuant to this chapter:

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1. Any person, other than an alleged perpetrator, making a report or participating in an investigation, evaluation, or assessment under this chapter if the person is acting in good faith.
2. Any person, employed by the department or the department's designee or a law enforcement agency, conducting or supervising an investigation, evaluation, or assessment or implementing or enforcing the provisions of this chapter if the person is acting in good faith and exercising due care.

50-25.2-10. Penalty for failure to report - Penalty and civil liability for false reports.

1. Any person required to report under subsection 1 of section 50-25.2-03 who willfully fails to do so is guilty of an infraction.
2. Any person who willfully makes a false report, or provides false information which causes the report to be made, is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.
3. A person who willfully makes a false report, or provides false information that causes a report to be made, is liable in a civil action for all damages suffered by the person reported.

50-25.2-11. Retaliation prohibited - Presumption - Penalty.

1. An employer who imposes any form of discipline or retaliation against an employee solely because the employee reported in good faith having knowledge of or reasonable cause to suspect that a vulnerable adult is or has been abused or neglected, or because the employee is a vulnerable adult with respect to whom a report was made, is guilty of a class B misdemeanor.
2. The employer of a person permitted to report pursuant to section 50-25.2-12 who retaliates against the person because of a report is liable to that person in a civil action for all damages.
3. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. An adverse action includes:
 - a. The discharge from or termination of employment;
 - b. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
 - c. The restriction or prohibition of access by the employee to any place of employment or persons affiliated with the place of employment.

50-25.2-11.1. Civil remedy for financial exploitation - Damages - Commencement of action.

1. A vulnerable adult who has been financially exploited has a cause of action against any perpetrator and may recover damages for that exploitation. The action may be brought in a court of competent jurisdiction by:
 - a. The vulnerable adult;
 - b. The vulnerable adult's guardian or conservator;
 - c. Any person acting on behalf of the vulnerable adult with the consent of the vulnerable adult; or
 - d. The personal representative of the estate of a deceased victim.
2. An action for financial exploitation of a vulnerable adult must be proven by clear and convincing evidence. If financial exploitation is proven, the court shall award to the plaintiff actual damages, reasonable attorney's fees and costs, and reasonable fees for the services of a guardian ad litem if appointed by the court.

3. If the financial exploitation of the vulnerable adult by the perpetrator involved oppression, fraud, deception, or actual malice, the court may award exemplary damages in accordance with section 32-03.2-11.
4. An action for damages for financial exploitation of a vulnerable adult must be commenced within six years after the plaintiff discovers or, through exercise of reasonable diligence, should have discovered the facts constituting the financial exploitation.

50-25.2-12. Confidentiality of records - Authorized disclosures.

All reports made under this chapter and all records and information obtained or generated as a result of the reports are confidential, but must be made available to:

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A person who is the subject of a report if the identity of persons reporting under section 50-25.2-03 is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.

50-25.2-13. Information, education, and training programs.

1. The department, in cooperation with county social service boards and law enforcement agencies, shall conduct a public information and education program. The elements and goals of the program must include:
 - a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary reporting authorized by this chapter, and the need for and availability of adult protective services.
 - b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.
2. The department, in cooperation with county social service boards and law enforcement agencies, shall institute a program of education and training for the department, the department's designee, and law enforcement agency staff and other persons who provide adult protective services.

50-25.2-14. Implementation contingent upon appropriation.

The department and county social service boards are not required to implement or enforce this chapter with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that region, area, or county.

**CHAPTER 32-03
DAMAGES AND COMPENSATORY RELIEF**

32-03-55. Immunity for report of suspected exploitation of disabled or vulnerable elderly adult. A financial institution or financial institution employee participating in good faith in the making of a report of suspected exploitation of a disabled adult or vulnerable elderly adult to a government agency or law enforcement agency, assisting in an investigation of suspected exploitation of a disabled adult or vulnerable elderly adult by a government agency or law enforcement agency, or furnishing information to a government agency or law enforcement agency about suspected exploitation of a disabled adult or vulnerable elderly adult is immune from any liability, civil or criminal, that might otherwise result from reporting a suspected case of exploitation of a disabled adult or vulnerable elderly adult. For purposes of any proceeding, civil or criminal, the good faith of a financial institution making a report of suspected exploitation of a Page No. 9 disabled adult or vulnerable elderly adult to a government agency or law enforcement agency must be presumed.

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2179

With Suggested amendments from the North Dakota Bankers Association

Introduced by

Senators J. Lee, Hogan, Mathern

Representatives K. Koppelman, Kreidt, Roers Jones

1 A BILL for an Act to create and enact chapter 6-08.5 of the North Dakota Century Code, relating
2 to the prevention of financial exploitation; and to amend and reenact section 6-08.1-03 of the
3 North Dakota Century Code, relating to a financial institution's duty of confidentiality.

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

5 **SECTION 1. AMENDMENT.** Section 6-08.1-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **6-08.1-03. Duty of confidentiality.**

8 A financial institution may not disclose customer information to ~~any~~ a person, governmental
9 agency, or law enforcement agency unless the disclosure is made in accordance with any of the
10 following:

- 11 1. Pursuant to consent granted by the customer in accordance with this chapter.
- 12 2. To a person other than a governmental agency or law enforcement agency pursuant to
13 valid legal process.
- 14 3. To a governmental agency or law enforcement agency pursuant to valid legal process
15 in accordance with this chapter.
- 16 4. For the purpose of reporting a suspected violation of the law in accordance with this
17 chapter.
- 18 5. For the purpose of notifying the agriculture commissioner ~~that~~ a financial institution
19 has notified a customer of the availability of the North Dakota mediation service.
- 20 6. As part of the disclosure made of deposits of public corporations with financial
21 institutions in the security pledge schedule verified by the custodian of securities
22 pursuant to section 21-04-09.
- 23 7. For purposes of reporting suspected exploitation of an eligible adult as defined by
24 section 12.1-31-07. ~~Nothing in this~~ This subsection may not be construed to impose

1 ~~upon a duty on a~~ financial institution ~~a duty~~ to investigate an alleged or suspected
2 exploitation of an eligible adult or to make a report to a governmental agency or law
3 enforcement agency.

4 8. For purposes of reporting suspected financial exploitation of an eligible adult under
5 chapter 6-08.5 to a law enforcement agency or the department of human services.
6 This subsection may not be construed to impose a duty on a financial institution to
7 investigate a suspected financial exploitation of an eligible adult or to make a report to
8 the department of human services or law enforcement agency.

9 **SECTION 2.** Chapter 6-08.5 of the North Dakota Century Code is created and enacted as
10 follows:

11 **6-08.5-01. Definitions.**

12 As used in this chapter:

including, but not limited to, a

- 13 1. "Account" means funds or assets held by a financial service provider, including a
14 deposit account, savings account, share account, certificate of deposit, trust account,
15 individual retirement account, guardianship or conservatorship account, investment or
16 securities account, retirement account, or loan or extension of credit.
- 17 2. "Eligible adult" means an individual who is at least sixty-five years of age or a
18 vulnerable adult as defined in section 50-25.2-01.
- 19 3. "Financial exploitation" means the wrongful or unauthorized taking, withholding,
20 appropriation, or use of an eligible adult's money, assets, or property for one's own
21 benefit or the benefit of a third party.
- 22 4. "Financial service provider" means a financial institution, credit union, savings and
23 loan association, or trust company.
- 24 5. "Financial transaction" means any of the following as applicable to the business or
25 services provided by a financial service provider:
- 26 a. A transfer or request to transfer or disburse funds or assets in an account;
27 b. A request to initiate a wire transfer, initiate an automated clearing house transfer,
28 or issue a money order, cashier's check, or official check;
29 c. A request to negotiate a check or other negotiable instrument;
30 d. A request to change the ownership of an account; or
31 e. A request for a loan, extension of credit, or draw on a line of credit.

1 6. "Law enforcement agency" means an agency authorized by law to enforce the law and
2 to conduct or engage in investigations or prosecutions for violations of the law.

3 **6-08.5-02. Eligible adult financial exploitation prevention - Duration of refusal or**
4 **hold - Notification and reporting - Immunity.**

5 1. If a financial service provider has ^{a good faith belief} reasonable cause to suspect financial exploitation
6 occurred, was attempted, or is being attempted, the financial service provider may
7 refuse a financial transaction or hold a financial transaction on an account:

- 8 a. Belonging to the eligible adult;
- 9 b. On which the eligible adult is a beneficiary, including a trust, guardianship, or
10 conservatorship account; or
- 11 c. Belonging to a person suspected of perpetrating financial exploitation.

12 2. A financial service provider may refuse a financial transaction or hold a financial
13 transaction under this section if the department of human services or a law
14 enforcement agency provides information to the financial service provider
15 demonstrating it is reasonable to believe financial exploitation occurred, was
16 attempted, or is being attempted.

17 3. Subsection 2 does not require a financial service provider to refuse a financial
18 transaction or hold a financial transaction if provided with information by the
19 department of human services or a law enforcement agency alleging financial
20 exploitation occurred, was attempted, or is being attempted. Except as ordered by a
21 court, a financial service provider may determine whether to refuse a financial
22 transaction or hold a financial transaction based on the information available to the
23 financial service provider.

24 4. A financial service provider refusing a financial transaction or holding a financial
25 transaction based on ^{a good faith belief} reasonable cause to suspect financial exploitation occurred, was
26 attempted, or is being attempted shall:

- 27 a. Except with regard to an account administered by a bank or trust company in a
28 fiduciary capacity, make a reasonable effort to notify, orally or in writing, one or
29 more parties authorized to transact business on the account; and
- 30 b. Report the incident to the department of human services, if the incident involves
31 financial exploitation of a vulnerable adult as defined in section 50-25.2-01.

- 1 5. Notice under this section is not required to be provided to a party authorized to
2 conduct business on the account if the party is the suspected perpetrator of financial
3 exploitation.
- 4 6. If a financial service provider refuses to conduct a financial transaction or hold a
5 financial transaction as authorized by this section based on the financial service
6 provider's ^{good faith belief} reasonable cause to suspect financial exploitation occurred, was attempted,
7 or is being attempted, the refusal or hold must expire upon the earlier of:
- 8 a. Ten business days after the date the financial service provider first refused a
9 financial transaction or held the financial transaction;
- 10 b. The time at which the financial service provider reasonably believes the financial
11 transaction will not result in financial exploitation; or
- 12 c. The time at which the person requesting the transaction has been advised of a
13 potential risk in the transaction and the person has requested the transaction to
14 continue, as long as the person is not the suspected perpetrator of financial
15 exploitation.
- 16 7. A financial service provider may extend the time permitted in this section to refuse a
17 financial transaction or hold a financial transaction based on a ^{good faith} reasonable belief
18 additional time is needed to investigate the financial transaction or to prevent financial
19 exploitation.
- 20 8. Notwithstanding subsections 6 and 7, a court of competent jurisdiction may enter an
21 order extending the time a financial service provider must refuse a financial
22 transaction or hold a financial transaction based on reasonable cause to suspect
23 financial exploitation occurred, was attempted, or is being attempted.
- 24 9. A financial service provider, ^{its employees, officers and directors, are} or an employee of a financial service provider, is immune
25 from all criminal, civil, and administrative liability:
- 26 a. For refusing or not refusing a financial transaction, or for holding or not holding a
27 financial transaction under this section; or
- 28 b. For actions taken in furtherance of the determination made under subdivision a, if
29 the determination is based upon a ^{good faith} reasonable belief.

1 **6-08.5-03. Individuals who may be contacted regarding suspected financial**
2 **exploitation - Immunity - Exemption from customer consent and notice provisions.**

3 1. A financial service provider may offer to an eligible adult the opportunity to submit and
4 update periodically a list of individuals the eligible adult authorizes the financial service
5 provider to contact if the financial service provider has reasonable cause to suspect
6 the eligible adult is a victim or a target of financial exploitation.

7 2. Notwithstanding subsection 1, a financial service provider having ^{good faith belief} reasonable cause to
8 suspect an eligible adult is the victim or target of financial exploitation may convey the
9 suspicion to one or more of the following individuals, provided the individual is not the
10 suspected perpetrator:

11 a. An individual on the list described in subsection 1.

12 b. A co-owner, additional authorized signatory, or beneficiary on the eligible adult's
13 account.

14 c. An individual known by the financial service provider to be a family member of
15 the eligible adult, including a parent, adult child, or sibling.

16 3. If a financial service provider provides information under this section, the financial
17 service provider may limit the information, such as disclosing only that the financial
18 service provider has reasonable cause to suspect the eligible adult may be a victim or
19 target of financial exploitation, without disclosing any other details or confidential
20 personal information regarding the financial affairs of the eligible adult.

21 4. The financial service provider may choose not to contact an individual on the list
22 provided under subsection 1, if the financial service provider suspects the individual is
23 engaged in financial exploitation.

24 5. The financial service provider may rely on information provided by the eligible adult in
25 compiling a list of contact individuals.

26 6. A financial service provider, or an ^{its employees, officers and directors, are} employee of a financial service provider, is immune
27 from all criminal, civil, and administrative liability for contacting an individual or electing
28 not to contact an individual under this section and for actions taken in furtherance of
29 that determination if the determination is made based on ^{a good faith} reasonable belief financial
30 exploitation occurred or was attempted.

1 7. Contact with an individual, and any information provided under this section, is exempt
2 from the customer consent provisions in sections 6-08.1-03 and 6-08.1-04.

3 **6-08.5-04. Refusal to accept power of attorney - Immunity.**

4 1. A financial service provider may refuse to accept an acknowledged power of attorney if
5 the financial service provider has reasonable cause to suspect the principal is or may
6 be the victim or target of financial exploitation by the agent or individual acting for or
7 with the agent.

8 2. A financial service provider, ^{its employees, officers and directors, are} or an employee of a financial service provider, is immune
9 from all criminal, civil, and administrative liability for refusing to accept a power of
10 attorney or for accepting a power of attorney under this section and for actions taken
11 in furtherance of that determination if the determination was based upon ^{a good faith} reasonable
12 belief financial exploitation occurred or was attempted.

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
JERRY KLEIN, CHAIRMAN
JANUARY 14, 2019

SB 2179 1/14/19 Att #5 pg. 1

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2179

Mr. Chairman and members of the Senate Industry, Business and Labor Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Senate Bill 2179, with some proposed amendments.

The Attorney General abhors the financial exploitation of North Dakota's elderly and vulnerable population. Unfortunately, such conduct can arise from or be facilitated by a caregiver, family member, complete stranger, or a member of an organized criminal enterprise or scheme. This conduct is particularly reprehensible when perpetrated against an elderly or vulnerable adult. Therefore, the Attorney General strongly supports this legislation enhancing the prevention, prosecution, and reporting of such fraudulent and illegal conduct.

These persons and actions can steal small amounts from vulnerable populations or they frequently will systematically drain the entire financial accounts and life-savings from the victims. The result is unfortunate for so many reasons.

The Attorney General applauds Senator Lee and her colleagues for introducing this legislation that will allow our friends in North Dakota's financial institutions to voluntarily report these thefts or refuse certain transactions entirely at their option and to be immune from liability when having a good faith basis to suspect the illegal conduct and a good faith belief that financial exploitation occurred, was attempted, or is being attempted.

The Attorney General's best work in Consumer Protection is when we can prevent the theft or fraud in the first place. The next line of defense is to at least try and stop the flow of losses after a pattern of illegal activity is discovered or suspected.

I was quite excited to see SB2179 and the opportunity to amend existing law and add new law to combat a very serious problem. Senator Lee was gracious in allowing us to offer an amendment that possibly could revolutionize fraud prevention for some victims.

Time and time, again, bank employees have contacted the Consumer Protection Division expressing an interest in more ability to intervene on behalf of victims. Many of these employees know that there is not clear, if any, authority to share information with

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the Attorney General regarding potential or actual victims. If you asked me whether some employees have shared this information anyway and we acted on that information, my memory would be very foggy, and I just could not say.

The Attorney General is proposing some amendments to make it clear that the law allows reporting of suspected or actual financial exploitation transactions that fall within the category of "consumer fraud," but, nonetheless, are no less of a wrongful taking than any other theft. We believe this conduct falls within the existing definition of "financial exploitation" as another form of "the wrongful or unauthorized taking, withholding, appropriation, or use of an eligible adult's money, assets" etc. already contained in the proposed definition in the original Bill draft. However, the Attorney General simply wants to make it clear to all, without any debate, or the necessity of a subsequent review of legislative history.

The most prevalent, abusive and serious forms of this type of financial exploitation are "Imposter Scams," in which the crook pretends to be a fake romance, sweepstakes, grant, computer technician, etc. I have attached as Exhibit 1 the Consumer Protection Division's 2018 Statistical Report, which provides a breakdown of the Imposter Scams and the forms of payment, etc. In 2018, there were 156 imposter scam complaints in which victims lost almost three million dollars. Of those, 23 victims lost the total sum of \$1.3M in fake Romance solicitations and 22 victims lost the sum of \$345,000 in the fake sweepstakes solicitations. I also have attached as Exhibit 2 the 2018 Imposter Scams Victims graphs showing the victims' ages, methods of payment, etc. Note that \$1.1M were made through bank transfers. 55 of the victims were age 65 or older. These North Dakota losses are highly under-reported to the Attorney General, as many victims report directly to other local law enforcement or do not make any reports. It is highly unusual and almost impossible to ever recover any of these sums. We recovered \$47,000 in a couple of instances in which the victim or victim's family immediately reported the transactions and we were able to intervene. Throughout the years, some victims have lost in excess of \$500,000. Please imagine the possible future benefits if bank employees suspect this is occurring after watching some initial transactions, and are able to report or stop the transactions in a timely manner before all assets have been drained.

We occasionally are a little disappointed and discouraged when some persons think this conduct, somehow, is not a theft because the victims or account holders consented to or directed the withdrawal or transaction. They did so under false pretenses. Based upon lies, the victims believed fabricated sweepstakes were legitimate contests. Instead, the prizes were, in fact, false and nonexistent. These cases all could be criminally prosecuted. It simply doesn't happen because it is almost impossible to identify and locate the perpetrators.

We are proposing on page 2, line 19, that the definition of "financial exploitation" "includes defrauding an eligible adult." "Defrauding" includes, among other definitions, "to take away or withhold money from a person by fraud or deceit. It is a term of art for

purposes of these statutes that law enforcement, courts, and the public will clearly understand.

Then, on Page 5, line 1, we are adding a new section 6-08.5-03 that provides financial service providers the opportunity to voluntarily report suspected financial exploitation to law enforcement or the Department of Human Services.

The remainder of the Attorney General's proposed amendments are related to the consistent use of "occurred, was attempted, or is being attempted" throughout Section 2 of the Bill.

I could talk at length about the many benefits of this proposed legislation and, particularly the new law in Section 2. Instead, I will just indicate that the ability of a bank employee, when appropriate, to report or refuse to conduct a financial transaction for an elderly or vulnerable adult is akin, on some level, to law enforcement having caught a perpetrator with a gun before he shot and killed someone.

This legislation takes the prevention of financial exploitation of elderly and vulnerable adults to a new and higher level. I frankly believe that this legislation will be a crowning achievement in protecting this elderly and vulnerable population and will be a resounding statement, once again, by this Legislature that, in North Dakota, we protect, value, and treasure this population.

The Attorney General respectfully recommends that the Senate Industry, Business & Labor Committee give Senate Bill 2179 a "Do Pass" recommendation with the Attorney General's proposed amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

January 14, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2179

Page 2, line 21, after "party" insert ", and includes defrauding an eligible adult"

Page 4, line 29, after "belief" insert "financial exploitation occurred, was attempted, or is being attempted"

Page 5, line 1, after "6-08.5-03." insert "Reporting to a law enforcement agency or the department of human services - Immunity."

If a financial service provider has a good faith basis to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider may report the information to a law enforcement agency or the department of human services. This section may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an eligible adult or to make a report to a law enforcement agency or the department of human services. A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section and for actions taken in furtherance of that determination if the determination is made based on a good faith belief financial exploitation occurred, was attempted, or is being attempted.

6-08-04."

Page 5, line 30, replace "or" with an underscored comma

Page 5, line 30, after "attempted" insert ", or is being attempted"

Page 6, line 3, replace "6-08.5-04" with "6-08.5-05"

Page 6, line 12, replace "or" with an underscored comma

Page 6, line 12, after "attempted" insert ", or is being attempted"

Renumber accordingly

2018 CPAT Statistics

EXHIBIT 1

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Complaints/Cases:

* Includes: consumer complaints, informal complaints, DNC complaints, identity theft affidavits & legal files

984 opened

999 closed = \$679,148 in consumer restitution

Legal Files:

79 opened

- 48 Legal
- 17 Correspondence
- 8 Multi State Legal
- 4 Investigation
- 2 Multi State Investigation

77 closed = \$3,051,220 (attorney's fees, investigation costs & civil penalties)

- 50 Legal
- 15 Correspondence
- 11 Multi State Legal
- 1 Investigation

Breakdown:

- 14 Resolved
- 14 AVC
- 11 Legal Action
- 10 Contractor AVC
- 18 No Action
- 4 Contractor Judgments
- 3 Cease & Desist
- 2 Judgments
- 1 Unresolved

Judgments (6) = \$71,000

Contractor Compliance:

- 16 contractor legal files:
 - 10 AVC = \$7,000
 - 4 Judgments = \$67,980.42
 - 2 No Action

Identity Theft Affidavits = 55

Data Breach Notifications = 64

2018 CPAT Statistics

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Presentations = 24

Top 10:

1. Telemarketing / DNC (178)
2. Imposter Scams (156)
3. Contractor / Home Improvement (68)
4. Identity Theft (55)
5. Automobile (41)
6. Mail Order (37)
7. Services (31)
8. Medical (27)
9. Retail (23)
10. Telephone (19)

Imposter Scams (Informal Complaints) = 156

- Total amount lost = \$2,903,207
- Total amount recovered = \$47,122

Romance	23	\$ 1,334,764.44
Fake Ads	23	\$ 67,205.16
Sweepstakes	22	\$ 345,244.83
Computer Tech	19	\$ 71,249.99
Grants	16	\$ 224,705.00
General/Other	15	\$ 374,574.45
Grandparent	12	\$ 156,246.00
Gov't/IRS	10	\$ 42,089.37
Time Share	6	\$ 250,427.58
Loans	5	\$ 33,170.00
Collection	2	\$ 387.50
Lottery	1	\$ 2,542.79
Phishing	1	\$ 400.00
Inheritance	1	\$ 200.00

Prepaid/GC	58	\$ 353,481.18
Wire	41	\$ 558,947.54
Cash	25	\$ 423,930.83
Bank Transfer	20	\$ 1,194,449.49
Other/Unknown	11	\$ 370,923.32
Fake Check	1	\$ 1,474.75

18-24	12	\$ 11,805.99
25-34	8	\$ 37,788.15
35-44	13	\$ 87,022.23
45-54	13	\$ 90,277.97
55-64	38	\$ 778,444.58
65+	55	\$ 1,603,128.47
Unknown	17	\$ 294,739.72

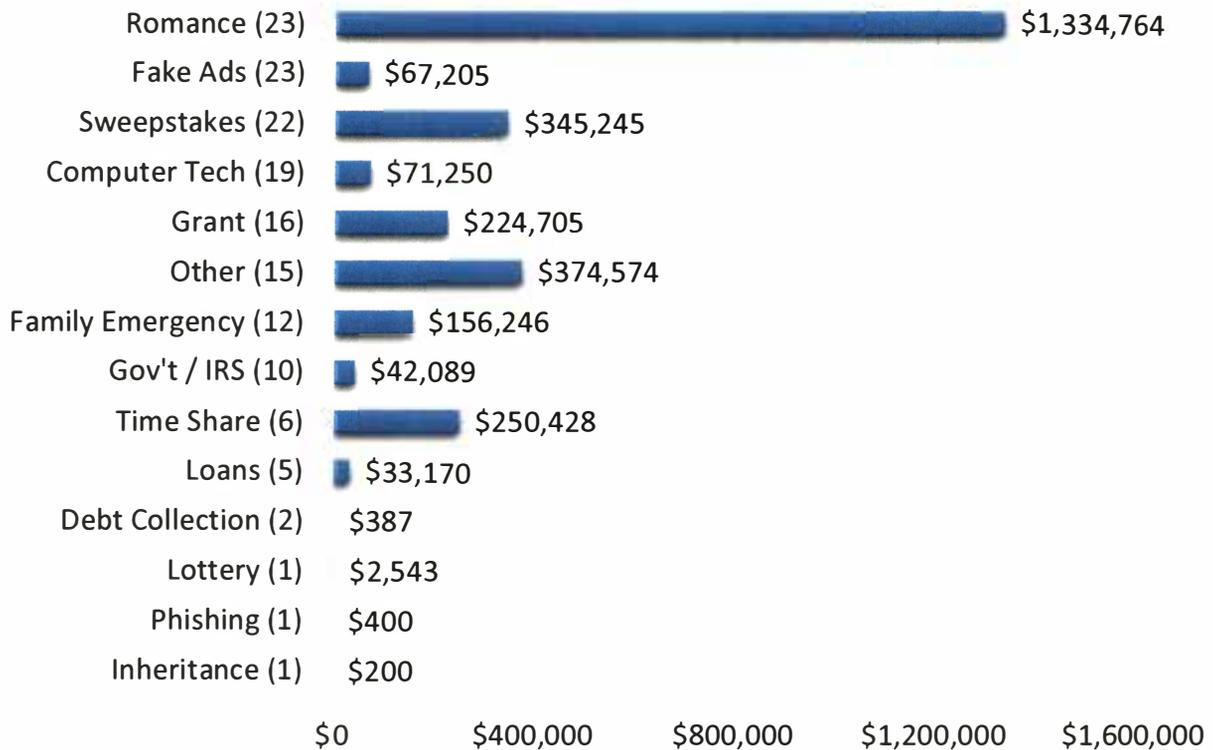
2018 CPAT Statistics

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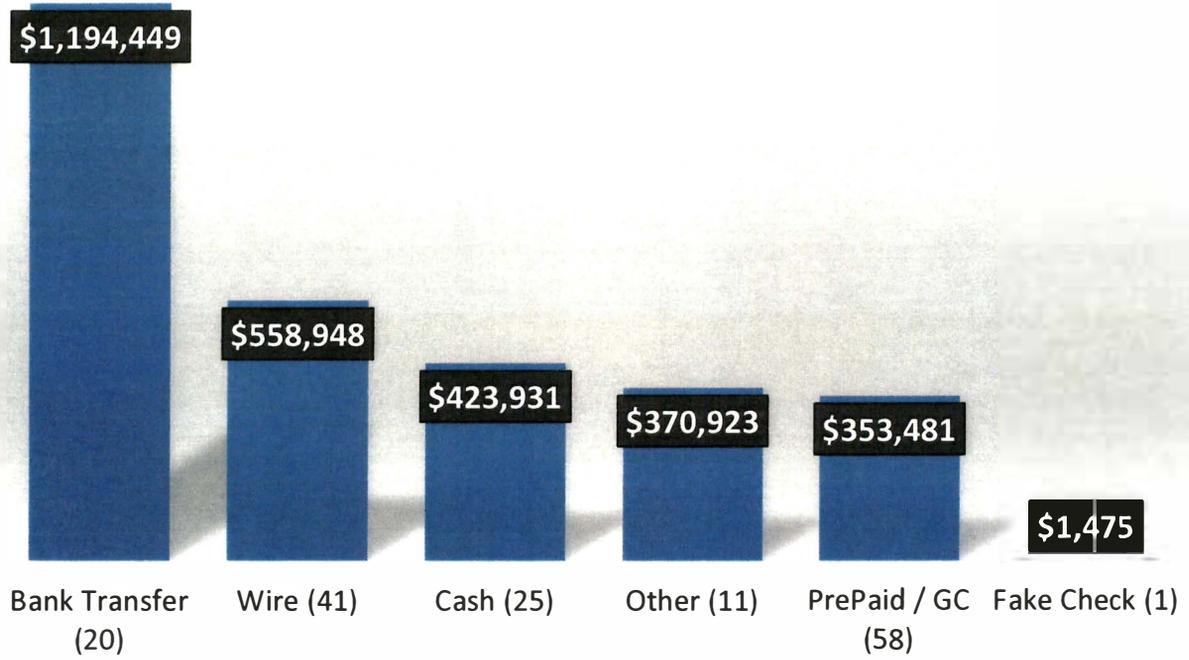
Do Not Call:

- 9 Investigations initiated
- 10 Legal Enforcement Actions and/or Settlements
 - 8 AVC = \$7,750
 - 2 No Action
- 163 Complaints
 - 86 violations for calls made to subscribers on DNC list
 - 75 violations for use of prerecorded messages
 - 2 text message violations

2018 IMPOSTER SCAM VICTIMS



Payment Methods



Age of Victims



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Real Possibilities in

North Dakota

Senate Bill 2179

Jan. 14, 2019

Senate Industry, Business and Labor

Mike Chaussee, AARP ND – mchaussee@aarp.org

Chairman Klein, Members of the Senate Industry, Business and Labor Committee, My name is Mike Chaussee, Associate State Director for Advocacy with AARP North Dakota. We are here to provide support for SB 2179.

Con artists, acquaintances, paid caregivers, neighbors and even family members have made financial abuse of seniors a multi-billion dollar industry. A study commissioned by MetLife Mature Market Institute in 2011, showed the estimated annual loss by victims at \$2.9 billion. Another study by a company called TrueLink estimates it at closer to \$36 billion a year (<https://www.consumerreports.org/cro/consumer-protection/financial-elder-abuse-costs--3-billion-----or-is-it--30-billion->). The difference lies in what the researchers define as abuse and who commits it. The TrueLink study includes family members, gimmicky products, work-from-home schemes and things like that. Most of that type of fraud goes unreported and doesn't show up in other studies.

The real numbers from the Federal Trade Commission show just under a \$1 billion reported.

The Federal Trade Commission's 2017 numbers show about 2.7 million separate scam related reports across the country. In North Dakota, residents reported more than two thousand scams. An interesting note about the North Dakota number - is that we rank last in the percentage of the number of reported scams. That doesn't mean there are fewer scams here. It's just that in North Dakota, for some reason, we don't report them.

There is some new information emerging about who falls for these scams. Millennials are actually the demographic that falls for them most often. But, as the demographics get older, they tend to lose more money. People aged 20-29 lost an average of \$400 per scam, people aged 80 or over lost an average of more than \$1,100. (Statistics provided by the Federal Trade Commission - <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/inside-the-numbers>)

What makes this population vulnerable? They're good targets. Many live alone, making them vulnerable. They're more trusting and cognitively can have trouble spotting scams. Plus, many of them have money saved up.

AARP supports reasonable protections against fraud, identity theft and other scams that target vulnerable people. Having financial institutions help watch for suspicious activity and freeze accounts if something exceptional arises can help protect vulnerable people from con-artists and scammers.

AARP also has a long history of fighting for protections against financial abuse. That is why we launched the Fraud Watch Network (www.fraudwatchnetwork.org). It is AARP's nationwide effort to ensure all individuals can spot scams, protect themselves, and even report suspected scams and fraud.

Good work is already being done in North Dakota. Agencies like Vulnerable Adult Protective Services (VAPS) and a well developed statewide public guardianship system add a layer of protection for the most vulnerable. Plus, last session legislators enhanced some penalties and allowed securities advisors to put a hold on funds, similar to what is being asked of financial institutions in this bill. These are excellent steps.

As the state continues to look at other ways to protect vulnerable people from financial exploitation, we'll be willing to offer suggestions – like state-wide task forces to look into the problem and/or training for employees who can help spot scams early.

Thank you for your thoughtful work on this bill. We encourage a do pass on SB 2179.

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THE FTC IS CLOSED DUE TO THE LAPSE IN GOVERNMENT FUNDING.

Learn about the status of FTC online services, website information updates, and the FTC Hearings during the lapse in funding.



FEDERAL TRADE COMMISSION

PROTECTING AMERICA'S CONSUMERS

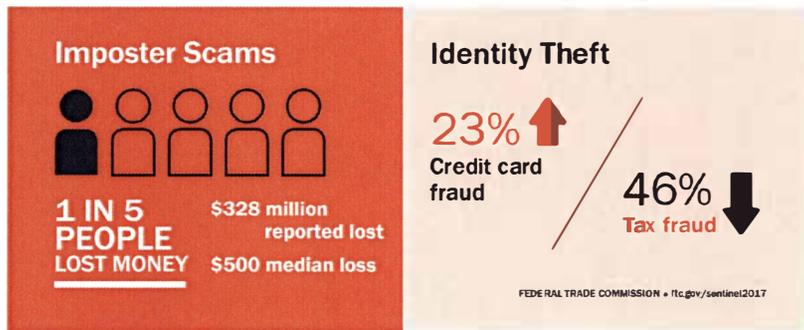
Consumer Sentinel Network Data Book 2017: Visual Snapshot



Younger people reported losing money to fraud more often than older people.



But when people aged 70+ had a loss, the median loss was much higher.



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THE FTC IS CLOSED DUE TO THE LAPSE IN GOVERNMENT FUNDING.

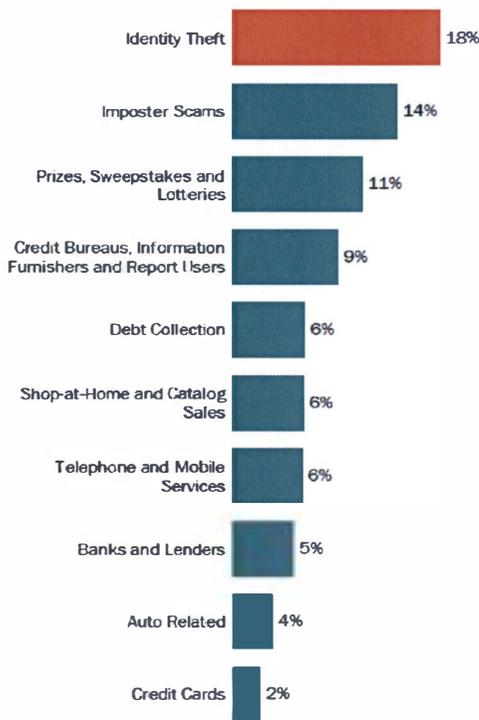
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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

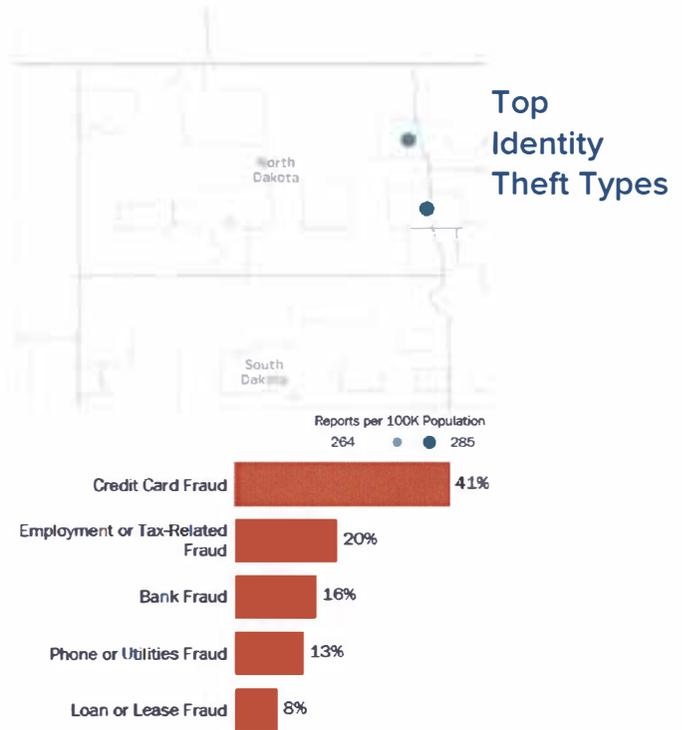
Consumer Sentinel Network Data Book 2017: North Dakota

Top Ten Report Categories



Fraud & Other Reports By MSA

[Download Metropolitan Statistical Area data \[CSV, .62 KB\]](#)



Fraud & Other Reports/Losses

State Rank (Reports per 100K Population)	50th
Total Fraud & Other Reports	2,090
Total Fraud Losses	\$1M
Median Fraud Loss	\$500

Identity Theft Reports

State Rank (Reports per 100K Population)	43rd
Total Identity Theft Reports	467

consumers, as indicated in the chart title. Consumers can report multiple types of identity theft.

Percentages are based on the total number of relevant 2017 reports from North Dakota



Fight Back Against Fraud!

Financial Clutter: What To Keep and What To Get Rid Of

What to keep for 1 month	What to keep for 1 year	What to keep for 3 years
<ul style="list-style-type: none"> • ATM Printouts <i>(When you balance your checkbook each month throw out the ATM receipts)</i> 	<ul style="list-style-type: none"> • Paycheck Stubs <i>(You can get rid of once you have compared to your W2 & annual social security statement)</i> • Utility Bills <i>(You can throw out after one year, unless you're using these as a deduction like a home office - then you need to keep them for 3 years after you've filed that tax return)</i> • Cancelled Checks <i>(Unless needed for tax purposes and then you need to keep for 3 years)</i> • Credit Card Receipts <i>(Unless needed for tax purposes and then you need to keep for 3 years)</i> • Bank Statements <i>(Unless needed for tax purposes and then you need to keep for 3 years)</i> • Quarterly Investment Statements <i>(Hold on to until you get your annual statement)</i> 	<ul style="list-style-type: none"> • Income Tax Returns <i>(Please keep in mind that you can be audited by the IRS for no reason up to three years after you filed a tax return. If you omit 25% of your gross income that goes up to 6 years and if you don't file a tax return at all, there is no statute of limitations.)</i> • Medical Bills & Cancelled Insurance Policies • Records of Selling a House <i>(Documentation for Capital Gains Tax)</i> • Records of Selling a Stock <i>(Documentation for Capital Gains Tax)</i> • Receipts, Cancelled Checks & other Documents that Support Income or a Deduction on your Tax Return <i>(Keep 3 years from the date the return was filed or 2 years from the date the tax was paid - which ever is later)</i> • Annual Investment Statement <i>(Hold onto 3 years after you sell your investment.)</i>
What to keep for 7 years	What to hold while active	Keep Forever
<ul style="list-style-type: none"> • Records of Satisfied Loans 	<ul style="list-style-type: none"> • Contracts • Insurance Documents • Stock Certificates • Property Records • Stock Records • Records of Pensions and Retirement Plans • Property Tax Records Disputed Bills <i>(Keep the bill until the dispute is resolved)</i> • Home Improvement Records <i>(Hold for at least 3 years after the due date for the tax return that includes the income or loss on the asset when it's sold)</i> 	<ul style="list-style-type: none"> • Marriage Licenses • Birth Certificates • Wills • Adoption Papers • Death Certificates • Records of Paid Mortgages
<p>Keep until warranty expires or can no longer return or exchange</p> <ul style="list-style-type: none"> • Sales Receipts <i>(Unless needed for tax purposes and then keep for 3 years)</i> 		



SB2179 1/23/19 AH#1 p1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2179
SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE
JERRY KLEIN, CHAIRMAN
JANUARY 23, 2019

JOINT AMENDMENTS OF
SENATOR JUDY LEE,
OFFICE OF ATTORNEY GENERAL,
NORTH DAKOTA BANKERS ASSOCIATION AND
CREDIT UNION ASSOCIATION OF THE DAKOTAS

PRESENTED BY
PARRELL D. GROSSMAN, DIRECTOR
CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Page 2, line 16, remove the first "or"

Page 2, line 16, after "loan" insert an underscored comma

Page 2, line 16, remove the second "or"

Page 2, line 16, after "credit" insert "or safe deposit box"

Page 2, line 21, after "party" insert ", and includes defrauding an eligible adult"

Page 3, line 5, replace "reasonable cause" with "a good faith belief"

Page 3, line 25, replace "reasonable cause" with "a good faith belief"

Page 4, line 4, remove "If a financial service provider refuses to conduct a financial transaction or hold a

Page 4, remove lines 5 through 23

Page 4, line 24, remove "9."

Page 4, line 24, replace "or an employee of a financial service provider, is" with "its employees, officers and directors, are"

Page 4, line 29, replace "reasonable" with "good faith"

Page 4, line 29, after "belief" insert "financial exploitation occurred, was attempted, or is being attempted"

Page 5, line 1, after the underscored period insert "Reporting to a law enforcement agency or the department of human services - Immunity."

If a financial service provider has a good faith belief to suspect financial exploitation of an eligible adult occurred, was attempted, or is being attempted, the financial service provider may report the information to a law enforcement agency or the department of human services. This section may not be construed to impose a duty on a financial institution to investigate a suspected financial exploitation of an

eligible adult or to make a report to a law enforcement agency or the department of human services. A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability for reporting or not reporting under this section and for actions taken in furtherance of that determination if the determination is made based on a good faith belief financial exploitation occurred, was attempted or is being attempted.

6-08.5-04

Page 5, line 7, replace "reasonable cause" with "a good faith belief"

Page 5, removes lines 14 through 15

Page 5, line 26, replace "an employee of a financial service provider, is" with "its employees, officers, and directors, are"

Page 5, line 29, replace "reasonable" with "a good faith"

Page 5, line 30, replace "or" with an underscored comma

Page 5, line 30, after "attempted" insert ", or is being attempted"

Page 6, line 3, replace "6-08.5-04" with "6-08.5-05"

Page 6, line 8, replace "or an employee of a financial service provider, is" with "its employees, officers and directors, are"

Page 6, line 12, replace "or" with an underscored comma

Page 6, line 12, after "attempted" insert ", or is being attempted"

Renumber accordingly

SB 2179

Senator Industry, Business & Labor Committee

March 11, 2019

I am Senator Judy Lee from District 13 and I appear today to introduce SB 2179.

We have seen increasing examples of financial abuse of vulnerable adults in which property and liquid assets have been misappropriated. Sometimes it is caregivers, sometimes family members, and sometimes unscrupulous people who sell insurance and other products and services who gain the vulnerable adults' confidence and convince them to transfer their assets to them or to write checks for large amounts.

Last session Karen Tyler, the Securities Commissioner, came to our Human Services committee during a hearing on financial abuse of vulnerable adults to tell us that the securities industry had just adopted model legislation which laid out a procedure for brokers and others to report suspicious transfers of wealth. We were glad that it had come about during the session, and we passed that legislation to help protect owners of stocks, bonds, mutual funds, etc., but there was no provision for banks included in the bill.

SB 2179 creates a process for banks to provide the same protection of their customers' assets by putting in place protections for the customers' rights as well as for the bank employees who act in good faith.

You will note on page 1 line 24 and continuing and page 2 that it is not a duty for a financial institution to investigate a suspicious incident. In subsection 8, it spells out that releasing a customer's information does not violate the prohibition on disclosure.

Section 2 contains the definitions, and subsection 2 states that an "eligible adult" is one who is at least 65 years of age or meets the definition of vulnerable adult that is in statute.

Subsection 3 added that the term includes defrauding an eligible adult.

SB 2179

Attachment 1
Mar 11, 2019

Subsection 5 lists the types of financial transactions that are reportable.

On page 3 immunity is put in place for financial services providers who act in good faith.

On page 4 line 25 the bill describes the individuals who may be contacted regarding suspected financial exploitation. The eligible adult can submit a list of those who can be informed. Notice can be given, unless the person listed is suspected of being the perpetrator.

On page 5 the discussion of the process continues, including the ability of the financial service provider to limit information or choose not to contact a particular person who might be suspected of being involved with the transaction in question.

There have been discussions with Mr. Parrell Grossman from the Attorney General's Consumer Protection Division, as well as with Mr. Rick Clayburgh with the ND Bankers Association. I appreciate their input and enthusiasm for trying to stop the exploitation that continues to take place.

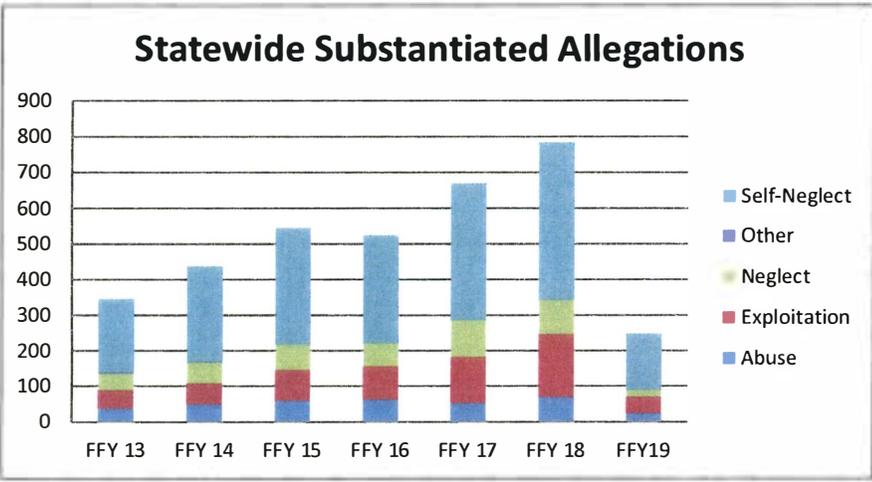
There are amendments which I consider friendly which have been suggested by these gentlemen, and we agree that the bill is improved with the changes which they have recommended.

Of course, there may be other suggested amendments from people who appear before you today, and I am confident that, 2179 can put in place the protection necessary for our neighbors and family members who have or who may encounter these circumstances. With the help of law enforcement and the financial institutions, coupled with the legislation already in place for brokerages, there will be more protection "up front" to recognize and investigate suspicious incidents occurring with customers' assets.

I encourage the IB&L committee to give SB 2179 a favorable review.

Attachment 1

SUBSTANTIATED ALLEGATIONS								
ALLEGATION TYPE	FFY 13	FFY 14	FFY 15	FFY 16	FFY 17	FFY 18	FFY 19	FFY19
Abuse	36	47	57	61	51	68	23	
Exploitation	51	59	87	94	130	177	46	
Neglect	47	60	72	64	104	95	20	
Other	3	1	0	0	0	0	0	
Self-Neglect	207	269	328	305	383	443	158	
Grand Total	344	436	544	524	668	783	247	



SB 2179

3

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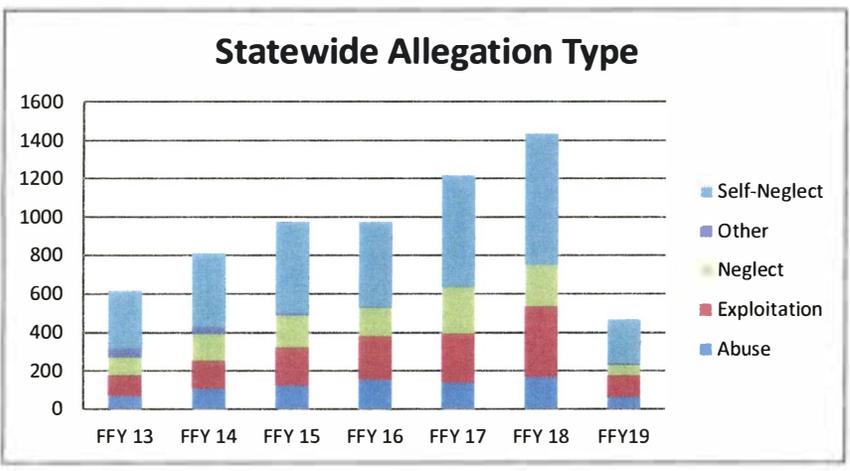
Mar 11, 2019

Attachment 1

SB 2179

Mar 11, 2019

STATEWIDE DATA							
ALLEGATION TYPE	FFY 13	FFY 14	FFY 15	FFY 16	FFY 17	FFY 18	FFY19
Abuse	66	104	120	152	135	165	60
Exploitation	107	146	201	225	256	368	114
Neglect	96	141	164	150	243	218	57
Self-Neglect	303	384	481	446	580	683	235
Other	42	35	8	1	0	0	2
Grand Total	572	775	966	973	1214	1434	468



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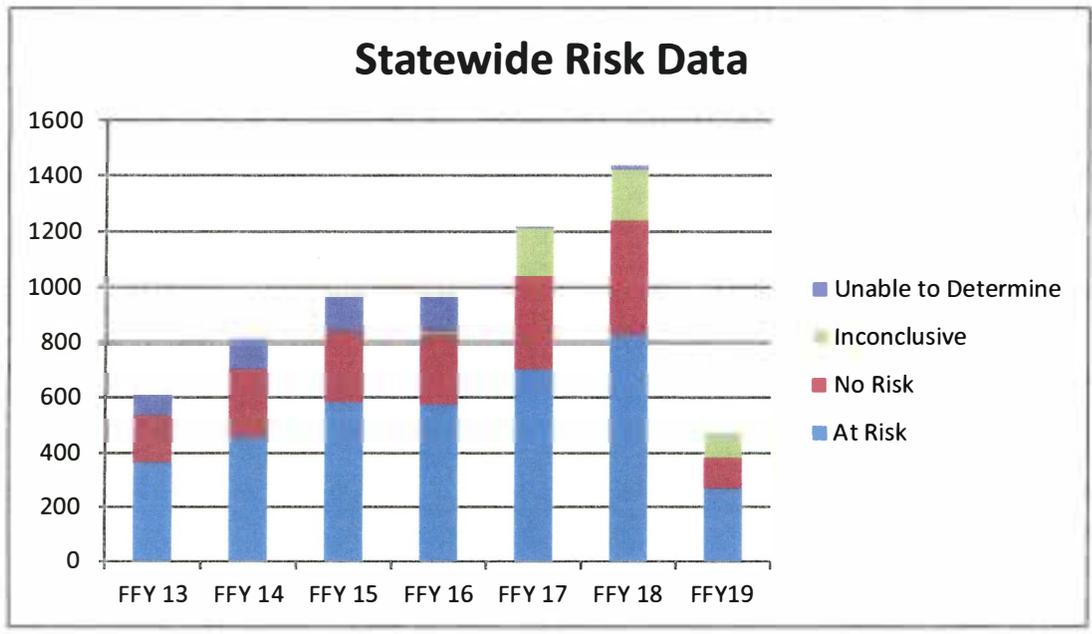
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Attachment I

SB 2179

Mar 11, 2019

STATEWIDE DATA							
DECISION	FFY 13	FFY 14	FFY 15	FFY 16	FFY 17	FFY 18	FFY19
At Risk	363	458	581	573	701	826	266
No Risk	171	244	256	254	331	413	115
Inconclusive	0	0	0	11	179	179	83
Unable to Determine	80	108	137	136	6	16	4
Grand Total	614	810	974	974	1217	1434	468



5

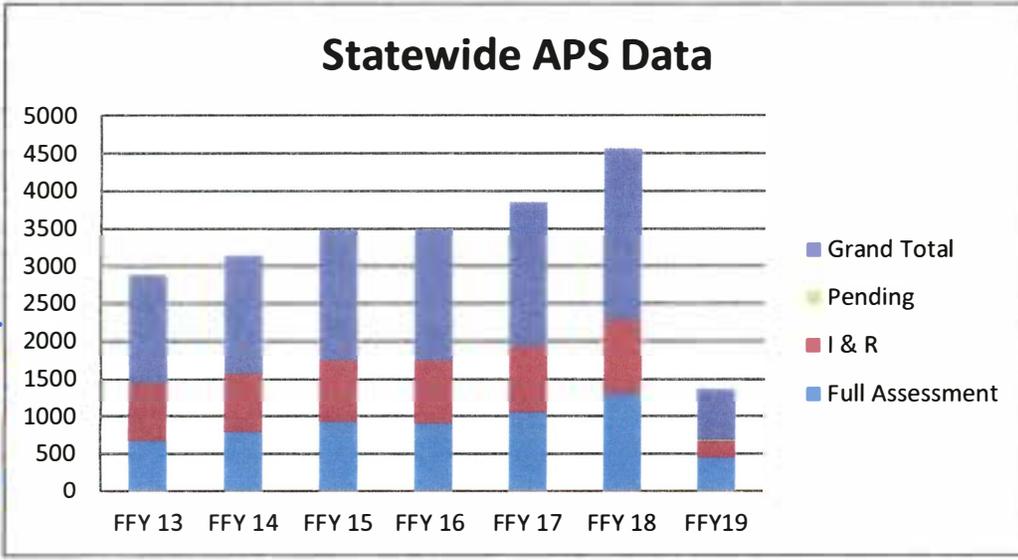
Pulled 1/23/19
Inconclusive added as an option in October 2016

Attachment 1

STATEWIDE DATA

DECISION	FFY 13	FFY 14	FFY 15	FFY 16	FFY 17	FFY 18	FFY19
Full Assessment	658	778	913	891	1040	1303	441
I & R	778	788	822	846	881	965	215
Pending	0	0	0	0	1	9	18
Grand Total	1436	1566	1735	1737	1922	2277	674

SB 2179



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Pulled 1/23/19

Mar 11, 2019

Attachment 2

Mar. 11, 2019
SB 2179

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2179

HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE
GEORGE KEISER, CHAIRMAN
MARCH 11, 2019

PRESENTED BY THE NORTH DAKOTA BANKER'S ASSOCIATION

Page 2, line 30, remove "or"

Page 2, line 31, after the second "credit" insert "; or

f. A request to designate or change the designation of beneficiaries to receive any property, benefit or contract right for an eligible adult"

Page 5, after line 7, insert:

"c. An attorney-in-fact, trustee, conservator, guardian or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult."

Re-number accordingly

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
GEORGE KEISER, CHAIRMAN
MARCH 11, 2019

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
ENGROSSED SENATE BILL NO. 2179

Mr. Chairman and members of the House Industry, Business and Labor Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Engrossed Senate Bill 2179.

The Attorney General supports the proposed amendments offered by the North Dakota Banker's Association today.

The Attorney General abhors the financial exploitation of North Dakota's elderly and vulnerable population. Unfortunately, such conduct can arise from or be facilitated by a caregiver, family member, complete stranger, or a member of an organized criminal enterprise or scheme. This conduct is particularly reprehensible when perpetrated against an elderly or vulnerable adult. Therefore, the Attorney General strongly supports this legislation enhancing the prevention, prosecution, and reporting of such fraudulent and illegal conduct.

These persons and actions can steal small amounts from vulnerable populations or they frequently will systematically drain the entire financial accounts and life-savings from the victims. The result is unfortunate for so many reasons.

The Attorney General applauds Senator Lee and her colleagues for introducing this legislation that will allow our friends in North Dakota's financial institutions to voluntarily report these thefts or refuse certain transactions entirely at their option and to be immune from liability when having a good faith basis to suspect the illegal conduct and a good faith belief that financial exploitation occurred, was attempted, or is being attempted.

The Attorney General's best work in Consumer Protection is when we can prevent the theft or fraud in the first place. The next line of defense is to at least try and stop the flow of losses after a pattern of illegal activity is discovered or suspected.

I was quite excited to see SB2179 with the opportunity to amend existing law and add new law to combat a very serious problem. Senator Lee was gracious in working with the Attorney General to offer amendments to this legislation that possibly could revolutionize fraud prevention for some victims.

Time and time, again, bank employees have contacted the Consumer Protection Division expressing an interest in more ability to intervene on behalf of victims. Many of these employees know that there is not clear, if any, authority to share information with the Attorney General regarding potential or actual victims.

The Attorney General is proposed some amendments to Senator Lee and the Senate to make it clear that the law allows reporting of suspected or actual financial exploitation transactions that fall within the category of "consumer fraud," but, nonetheless, are no less of a wrongful taking than any other theft. We believe this conduct falls within the existing definition of "financial exploitation" as another form of "the wrongful or unauthorized taking, withholding, appropriation, or use of an eligible adult's money, assets" etc. already contained in the proposed definition in the original Bill draft. However, the Attorney General simply wants to make it clear to all, without any debate, or the necessity of a subsequent review of legislative history.

The most prevalent, abusive and serious forms of this type of financial exploitation are "Imposter Scams," in which the crook pretends to be a fake romance, sweepstakes, grant, computer technician, etc. I have attached as Exhibit 1 the Consumer Protection Division's 2018 Statistical Report, which provides a breakdown of the Imposter Scams and the forms of payment, etc. In 2018, there were 156 imposter scam complaints in which victims lost almost three million dollars. Of those, 23 victims lost the total sum of \$1.3M in fake Romance solicitations and 22 victims lost the sum of \$345,000 in the fake sweepstakes solicitations. These North Dakota losses are highly under-reported to the Attorney General, as many victims report directly to other local law enforcement or do not make any reports. It is highly unusual and almost impossible to ever recover any of these sums. We recovered \$47,000 in a couple of instances in which the victim or victim's family immediately reported the transactions and we were able to intervene. Throughout the years, some victims have lost in excess of \$500,000. Please imagine the possible future benefits if bank employees suspect this is occurring after watching some initial transactions, and are able to report or stop the transactions in a timely manner before all assets have been drained.

This type of conduct is theft even when the victims or account holders consented to or directed the withdrawal or transaction, pursuant to false pretenses or promises. Based upon lies, the victims believed fabricated sweepstakes were legitimate contests. Instead, the prizes were, in fact, false and nonexistent. These cases all could be criminally prosecuted. It simply doesn't happen because it is almost impossible to identify and locate the perpetrators, so we must try to prevent the fraud in the first instances.

This legislation on page 2, lines 19-21, has an important definition of "financial exploitation" that "includes defrauding an eligible adult." "Defrauding" includes, among other definitions, "to take away or withhold money from a person by fraud or deceit. It is a term of art for purposes of these statutes that law enforcement, courts, and the public will clearly understand.

Attachment 3
Nov. 11, 2019
SB 2179

Then, on Page 4, lines 13-17, we are adding a new section 6-08.5-03 that provides financial service providers the opportunity to voluntarily report suspected financial exploitation to law enforcement or the Department of Human Services.

The ability of a bank employee, when appropriate, to report or refuse to conduct a financial transaction for an elderly or vulnerable adult is the real time ability to stop the theft before it occurs, or to stop continued losses when the pattern is discovered.

This legislation takes the prevention of financial exploitation of elderly and vulnerable adults to a new and higher level. This legislation will be an important and significant achievement in protecting our elderly and vulnerable population.

The Attorney General respectfully recommends that the House Industry, Business & Labor Committee give Engrossed Senate Bill 2179 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

2018 CPAT Statistics

Complaints/Cases:

* Includes: consumer complaints, informal complaints, DNC complaints, identity theft affidavits & legal files

984 opened

999 closed = \$679,148 in consumer restitution

Legal Files:

79 opened

- 48 Legal
- 17 Correspondence
- 8 Multi State Legal
- 4 Investigation
- 2 Multi State Investigation

77 closed = \$3,051,220 (attorney's fees, investigation costs & civil penalties)

- 50 Legal
- 15 Correspondence
- 11 Multi State Legal
- 1 Investigation

Breakdown:

- 14 Resolved
- 14 AVC
- 11 Legal Action
- 10 Contractor AVC
- 18 No Action
- 4 Contractor Judgments
- 3 Cease & Desist
- 2 Judgments
- 1 Unresolved

Judgments (6) = \$71,000

Contractor Compliance:

- 16 contractor legal files:
 - 10 AVC = \$7,000
 - 4 Judgments = \$67,980.42
 - 2 No Action

Identity Theft Affidavits = 55

Data Breach Notifications = 64

2018 CPAT Statistics**Presentations = 24****Top 10:**

1. Telemarketing / DNC (178)
2. Imposter Scams (156)
3. Contractor / Home Improvement (68)
4. Identity Theft (55)
5. Automobile (41)
6. Mail Order (37)
7. Services (31)
8. Medical (27)
9. Retail (23)
10. Telephone (19)

Imposter Scams (Informal Complaints) = 156

- Total amount lost = \$2,903,207
- Total amount recovered = \$47,122

Romance	23	\$ 1,334,764.44	Prepaid/GC	58	\$ 353,481.18
Fake Ads	23	\$ 67,205.16	Wire	41	\$ 558,947.54
Sweepstakes	22	\$ 345,244.83	Cash	25	\$ 423,930.83
Computer Tech	19	\$ 71,249.99	Bank Transfer	20	\$ 1,194,449.49
Grants	16	\$ 224,705.00	Other/Unknown	11	\$ 370,923.32
General/Other	15	\$ 374,574.45	Fake Check	1	\$ 1,474.75
Grandparent	12	\$ 156,246.00			
Gov't/IRS	10	\$ 42,089.37			
Time Share	6	\$ 250,427.58			
Loans	5	\$ 33,170.00			
Collection	2	\$ 387.50			
Lottery	1	\$ 2,542.79			
Phishing	1	\$ 400.00			
Inheritance	1	\$ 200.00			

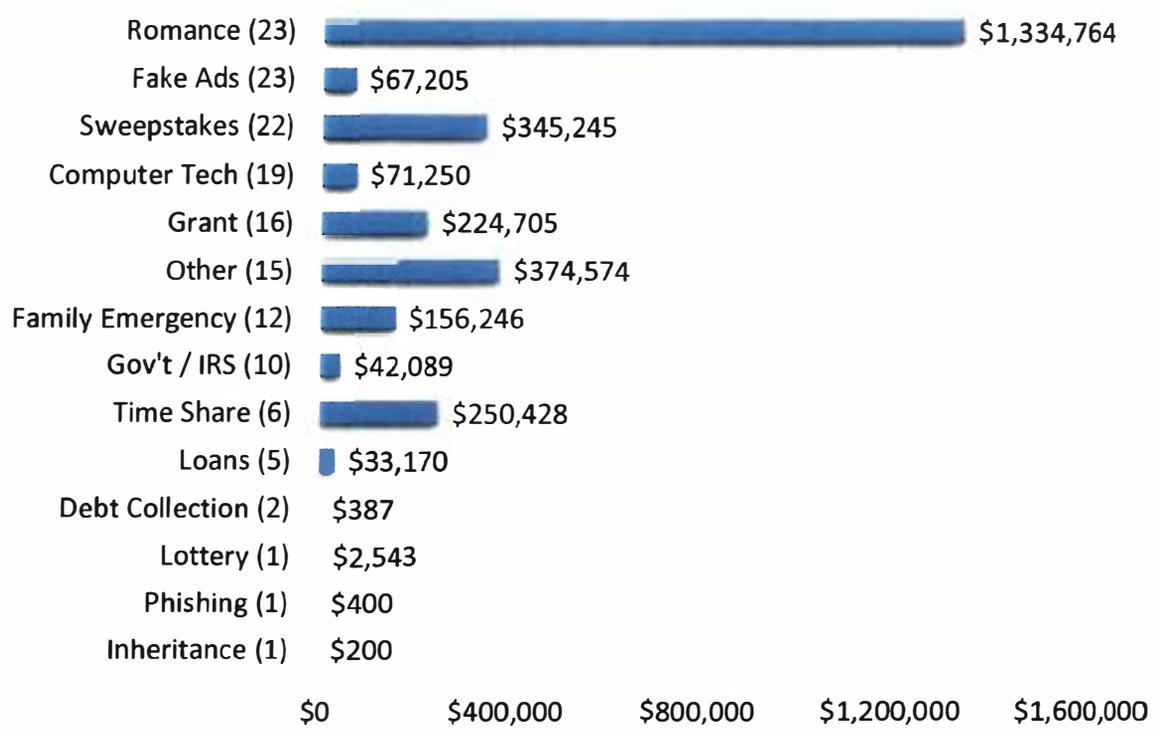
18-24	12	\$ 11,805.99
25-34	8	\$ 37,788.15
35-44	13	\$ 87,022.23
45-54	13	\$ 90,277.97
55-64	38	\$ 778,444.58
65+	55	\$ 1,603,128.47
Unknown	17	\$ 294,739.72

2018 CPAT Statistics

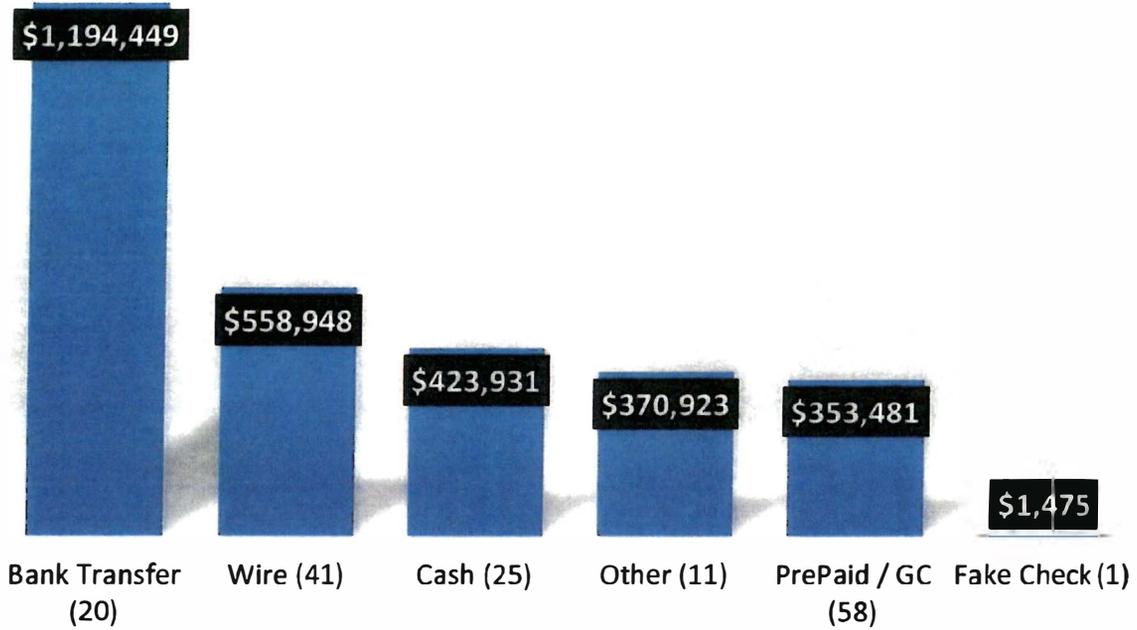
Do Not Call:

- 9 Investigations initiated
- 10 Legal Enforcement Actions and/or Settlements
 - 8 AVC = \$7,750
 - 2 No Action
- 163 Complaints
 - 86 violations for calls made to subscribers on DNC list
 - 75 violations for use of prerecorded messages
 - 2 text message violations

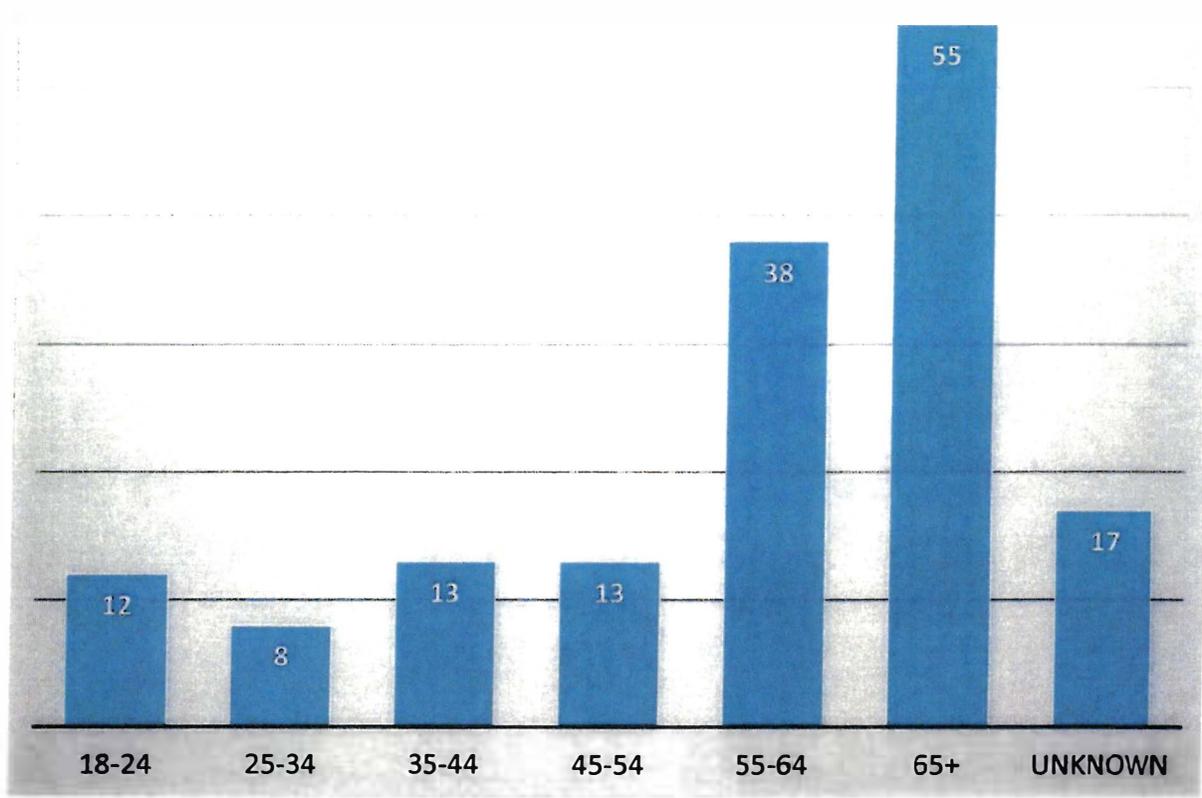
2018 IMPOSTER SCAM VICTIMS



Payment Methods



Age of Victims



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2179

HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE
GEORGE KEISER, CHAIRMAN
MARCH 11, 2019

PRESENTED BY THE NORTH DAKOTA BANKER'S ASSOCIATION

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"c. An attorney-in-fact, trustee, conservator, guardian or other fiduciary who has been selected or appointed to manage some or all of the financial affairs of the eligible adult."

Renumber accordingly

A Attachment 4
March 11, 2019
SB 2179



Real Possibilities in

North Dakota

Senate Bill 2179

March 11, 2019

House Industry, Business and Labor

Mike Chaussee, AARP ND – mchaussee@aarp.org

Chairman Keiser, Members of the House Industry, Business and Labor Committee, My name is Mike Chaussee, Associate State Director for Advocacy with AARP North Dakota. We are here to provide support for SB 2179.

Con artists, acquaintances, paid caregivers, neighbors and even family members have made financial abuse of seniors a multi-billion dollar industry. A study commissioned by MetLife Mature Market Institute in 2011, showed the estimated annual loss by victims at \$2.9 billion. Another study by a company called TrueLink estimates it at closer to \$36 billion a year (<https://www.consumerreports.org/cro/consumer-protection/financial-elder-abuse-costs--3-billion----or-is-it--30-billion->). The difference lies in what the researchers define as abuse and who commits it. The TrueLink study includes family members, gimmicky products, work-from-home schemes and things like that. Most of that type of fraud goes unreported and doesn't show up in other studies.

The real numbers from the Federal Trade Commission show just under a \$1 billion reported.

The Federal Trade Commission's 2017 numbers show about 2.7 million separate scam related reports across the country. In North Dakota, residents reported more than two thousand scams. An interesting note about the North Dakota number - is that we rank last in the percentage of the number of reported scams. That doesn't mean there are fewer scams here. It's just that in North Dakota, for some reason, we don't report them.

There is some new information emerging about who falls for these scams. Millennials are actually the demographic that falls for them most often. But, as the demographics get older, they tend to lose more money. People aged 20-29 lost an average of \$400 per scam, people aged 80 or over lost an average of more than \$1,100. (Statistics provided by the Federal Trade Commission - <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/inside-the-numbers>)

What makes this population vulnerable? They're good targets. Many live alone, making them vulnerable. They're more trusting and cognitively can have trouble spotting scams. Plus, many of them have money saved up.

Attachment 4
March 11, 2019
SB 2179

AARP supports reasonable protections against fraud, identity theft and other scams that target vulnerable people. Having financial institutions help watch for suspicious activity and freeze accounts if something exceptional arises can help protect vulnerable people from con-artists and scammers.

AARP also has a long history of fighting for protections against financial abuse. That is why we launched the Fraud Watch Network (www.fraudwatchnetwork.org). It is AARP's nationwide effort to ensure all individuals can spot scams, protect themselves, and even report suspected scams and fraud.

Good work is already being done in North Dakota. Agencies like Vulnerable Adult Protective Services (VAPS) and a well develop statewide public guardianship system add a layer of protection for the most vulnerable. Plus, last session legislators enhanced some penalties and allowed securities advisors to put a hold on funds, similar to what is being asked of financial institutions in this bill. These are excellent steps.

As the state continues to look at other ways to protect vulnerable people from financial exploitation, we'll be willing to offer suggestions – like state-wide task forces to look into the problem and/or training for employees who can help spot scams early.

Thank you for your thoughtful work on this bill. We encourage a do pass on SB 2179.