

## 2005 DRAFTING REQUEST

### Bill

Received: **01/27/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Scott Manley**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to: **michael.dsida@legis.state.wi.us**  
**cathlene.hanaman@legis.state.wi.us**

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### Pre Topic:

No specific pre topic given

---

### Topic:

Crimes against financial institutions

---

### Instructions:

See Attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 03/24/2005	lkunkel 04/14/2005	chaugen 04/15/2005	_____	Inorthro 04/15/2005		S&L Crime
/1	rryan 01/05/2006	lkunkel 01/09/2006	chaugen 01/09/2006	_____	Inorthro 01/09/2006		S&L Crime
/2	rryan 01/23/2006	lkunkel 01/23/2006	jfrantze 01/23/2006	_____	sbasford 01/23/2006		S&L Crime

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/3	rryan 01/24/2006	kfollett 01/24/2006	rschluet 01/24/2006	_____	mbarman 01/24/2006	Inorthro 01/25/2006	

FE Sent For:

11/3" 2/6/04  
J24

<END>

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1/24  
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1/2/mk/23  
Self  
1/23

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*1/1mk 1/9* *OK 1-9* *Ch 1-9*  
*RS*  
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/?	rryan	pl/mk 4/13	Ch 4-15	Ch 4-15 PS			

FE Sent For:

<END>

## Ryan, Robin

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**From:** Kunkel, Mark  
**Sent:** Thursday, January 27, 2005 4:26 PM  
**To:** Ryan, Robin  
**Subject:** FW: Financial Crimes draft

Robin:

Would you be the appropriate drafter for the request described below?

-- Mark

-----Original Message-----

**From:** Manley, Scott  
**Sent:** Thursday, January 27, 2005 2:29 PM  
**To:** Kunkel, Mark  
**Subject:** Financial Crimes draft

Mark,

Attached below is sample language for a financial crimes bill. Thank you for looking at this, and shipping it to the appropriate crime legislation drafter.

Scott Manley



WI- Proposed  
Financial Crime L...

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21

BILL \_\_\_\_\_

Bill \_\_\_\_\_ to be inserted with everything after the enacting clause with the following:

"Chapter 943. Crimes Against Property is amended by adding Section 943.80 to 943.95 as follows:

(943 WIS. STATS. Subchapter IV)  
WISCONSIN FINANCIAL CRIME LAW

(943 WIS. STATS. Subchapter IV)  
Sec. 943.80 Short title. This Article may be cited as the Wisconsin Financial Crime Act.

(943 WIS. STATS. Subchapter IV)  
Sec. 943.81. Legislative declaration. It is the public policy of this State that the substantial burden placed upon the economy of this State resulting from the rising incidence of financial crime is a matter of grave concern to the people of this State who have a right to be protected in their health, safety and welfare from the effects of this crime.

(943 WIS. STATS. Subchapter IV)  
Sec. 943.82. Definitions. In this Article unless the

-2-

context otherwise requires:

(a) "Financial crime" means an offense described in this Article.

(b) "Financial institution" means any bank, savings bank, savings and loan association, credit union, trust company, or other depository of money, or medium of savings and collective investment.

*214.01(i)(j)*  
*not in definition OK?*

(943 WIS. STATS. Subchapter IV)  
Sec. 943.83. Misappropriation of financial institution property. A person commits the offense of misappropriation of a financial institution's property whenever the person knowingly misappropriates, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such financial institution, or any moneys, funds, assets or securities entrusted to the custody or care of such financial institution, or to the custody or care of any agent, officer, director, or employee of such financial institution.

*= theft by fiduciary who already has possession*

(new 943 WIS. STATS. Subchapter IV)  
Sec. 943.84. Commercial bribery involving a financial institution.

(a) A person commits the offense of commercial bribery

22 involving a financial institution when the person confers or  
23 offers or agrees to confer any benefit upon any employee,  
24 agent, or fiduciary without the consent of the latter's  
25 employer or principal, with intent to influence his or her  
26 conduct in relation to his or her employer's or principal's  
27 affairs.

28 (b) An employee, agent, or fiduciary of a financial  
29 institution commits the offense of commercial bribery of a  
30 financial institution when, without the consent of his or her  
31 employer or principal, he or she solicits, accepts, or agrees  
32 to accept any benefit from another person upon an agreement

-3-

1 or understanding that such benefit will influence his or her  
2 conduct in relation to his or her employer's or principal's  
3 affairs.

4 (943 WIS. STATS. Subchapter IV)

5 Sec. 943.85. Financial institution fraud. A person  
6 commits the offense of financial institution fraud when the  
7 person knowingly executes or attempts to execute a scheme or  
8 artifice:

9 (1) to defraud a financial institution; or

10 (2) to obtain any of the moneys, funds, credits, assets,  
11 securities, or other property owned by or under the custody  
12 or control of a financial institution, by means of pretenses,  
13 representations, or promises he or she knows to be false.

14 For the purposes of this Section, "scheme or artifice to  
15 defraud" includes a scheme or artifice to deprive a financial  
16 institution of the intangible right to honest services.

*Fed. Lang.  
18 USC 1346*

17 (943 WIS. STATS. Subchapter IV)

18 Sec. 943.86. Loan fraud. A person commits the offense of  
19 loan fraud when the person knowingly, with intent to defraud,  
20 makes any false statement or report, or willfully overvalues  
21 any land, property or security, for the purpose of  
22 influencing in any way the action of a financial institution  
23 to act upon any application, advance, discount, purchase,  
24 purchase agreement, repurchase agreement, commitment, or  
25 loan, or any change or extension of any of the same, by  
26 renewal, deferment of action or otherwise, or the acceptance,  
27 release, or substitution of security.

✓

*probably covered  
under theft by  
fraud*

28 (943 WIS. STATS. Subchapter IV)

29 Sec. 943.87. Concealment of collateral. A person commits  
30 the offense of concealment of collateral when the person,  
31 with intent to defraud, knowingly conceals, removes, disposes

-4-

1 of, or converts to the person's own use or to that of  
2 another, any property mortgaged or pledged to or held by a  
3 financial institution.

4 (943 WIS. STATS. Subchapter IV)

5 Sec. 943.88. Financial institution robbery. A person  
6 commits the offense of financial institution robbery when the  
7 person, by force or threat of force, or by intimidation,

8 takes, or attempts to take, from the person or presence of  
9 another, or obtains or attempts to obtain by extortion, any  
10 property or money or any other thing of value belonging to,  
11 or in the care, custody, control, management, or possession  
12 of, a financial institution.

13 (943 WIS. STATS. Subchapter IV)

14 Sec. 943.89. Conspiracy to commit a financial crime.

15 (a) A person commits the offense of a conspiracy to  
16 commit a financial crime when, with the intent that a  
17 violation of this Article be committed, the person agrees  
18 with another person to the commission of that offense.

19 (b) No person may be convicted of conspiracy to commit a  
20 financial crime unless an overt act or acts in furtherance of  
21 the agreement is alleged and proved to have been committed by  
22 that person or by a co-conspirator and the accused is a part  
23 of a common scheme or plan to engage in the unlawful  
24 activity.

25 (c) It shall not be a defense to the offense of a  
26 conspiracy to commit a financial crime that the person or  
27 persons with whom the accused is alleged to have conspired:

- 28 (1) has not been prosecuted or convicted,
- 29 (2) has been convicted of a different offense,
- 30 (3) is not amenable to justice,
- 31 (4) has been acquitted, or
- 32 (5) lacked the capacity to commit the offense.

*Covered by  
939.31*

-5-

1 (943 WIS. STATS. Subchapter IV)

2 Sec. 943.90. Continuing financial crimes enterprise. A  
3 person commits the offense of a continuing financial crimes  
4 enterprise when the person knowingly, within an 18 month  
5 period, commits 3 or more separate offenses under this  
6 Article, or, if involving a financial institution, any other  
7 felony offenses established under this Code.

8 (943 WIS. STATS. Subchapter IV)

9 Sec. 943.91. Organizer of a continuing financial crimes  
10 enterprise.

11 (a) A person commits the offense of being an organizer  
12 of a continuing financial crimes enterprise when the person:

13 (1) with the intent to commit an offense under this  
14 Article, or, if involving a financial institution, any  
15 other felony offense established under this Code, agrees  
16 with another person to the commission of that offense on  
17 3 or more separate occasions within an 18 month period,  
18 and

19 (2) with respect to the other persons within the  
20 conspiracy, occupies a position of organizer, supervisor,  
21 or financier or other position of management.

22 (b) The person with whom the accused agreed to commit  
23 the 3 or more offenses under this Article, or, if involving a  
24 financial institution, any other felony offenses established  
25 under this Code, need not be the same person or persons for  
26 each offense, as long as the accused was a part of the common  
27 scheme or plan to engage in each of the 3 or more alleged  
28 offenses.

*any common  
scheme  
requirement?*

*Fed RCO  
8 USC 1962(a)(1)(C)*

29 (943 WIS. STATS. Subchapter IV)  
30 Sec. 943.92. Sentence.  
31 (a) A financial crime, the full value of which does not  
exceed \$300, is a Class C misdemeanor.

-6-

1 (b) A person who has been convicted of a financial  
2 crime, the full value of which does not exceed \$300, and who  
3 has been previously convicted of a financial crime or any  
4 type of theft, robbery, armed robbery, burglary, residential  
5 burglary, possession of burglary tools, or home invasion, is  
6 guilty of a Class E felony. When a person has such prior  
7 conviction, the information or indictment charging that  
8 person shall state such prior conviction so as to give notice  
9 of the State's intention to treat the charge as a felony. The  
10 fact of such prior conviction is not an element of the  
11 offense and may not be disclosed to the jury during trial  
12 unless otherwise permitted by issues properly raised during  
13 such trial.

14 (c) A financial crime, the full value of which exceeds  
15 \$300 but does not exceed \$10,000, is a Class D felony. When a  
16 charge of financial crime, the full value of which exceeds  
17 \$300 but does not exceed \$10,000, is brought, the value of  
18 the financial crime involved is an element of the offense to  
19 be resolved by the trier of fact as either exceeding or not  
20 exceeding \$300.

21 (d) A financial crime, the full value of which exceeds  
22 \$10,000 but does not exceed \$100,000, is a Class C felony.  
23 When a charge of financial crime, the full value of which  
24 exceeds \$10,000 but does not exceed \$100,000, is brought, the  
25 value of the financial crime involved is an element of the  
26 offense to be resolved by the trier of fact as either  
27 exceeding or not exceeding \$10,000.

28 (e) A financial crime, the full value of which exceeds  
29 \$100,000, is a Class BC felony. When a charge of financial  
30 crime, the full value of which exceeds \$100,000, is brought,  
31 the value of the financial crime involved is an element of  
32 the offense to be resolved by the trier of fact as either  
33 exceeding or not exceeding \$100,000.

34 (f) A financial crime which is a financial institution

-7-

1 robbery is a Class BC felony.

2 (g) A financial crime which is a continuing financial  
3 crimes enterprise is a Class C felony.

4 (h) A financial crime which is the offense of being an  
5 organizer of a continuing financial crimes enterprise is a  
6 Class B felony.

7 (i) Notwithstanding any other provisions of this  
8 Section, a financial crime which is loan fraud in connection  
9 with a loan secured by residential real estate is a Class C  
10 felony.

11 (943 WIS. STATS. Subchapter IV)  
12 Sec. 943.93. Period of limitations. The period of  
13 limitations for prosecution of any offense defined in this

I felony

Class H

Class B

Class C

\$500

\$500

\$500

\$500

Other Wis. Cr. with  
internal enhancements  
don't have such  
requirements.  
See for ex.

947.013  
940.09 (1c)  
940.32

943.20  
> 10K = G

CCF  
organizer

special penalty  
for loan  
fraud involving  
real estat

14 Article begins at the time when the last act in furtherance  
15 of the offense is committed.

16 (943 WIS. STATS. Subchapter IV)

17 Sec. 943.94. Fraudulent schemes and artifices.

18 (a) Fraud by wire, radio, or television.

19 (1) A person commits wire fraud when he or she:

20 (A) devises or intends to devise a scheme or  
21 artifice to defraud or to obtain money or property  
22 by means of false pretenses, representations, or  
23 promises; and

24 (B) (i) transmits or causes to be transmitted  
25 from within this State; or

26 (ii) transmits or causes to be  
27 transmitted so that it is received by a person  
28 within this State; or

29 (iii) transmits or causes to be  
30 transmitted so that it is reasonably  
31 foreseeable that it will be accessed by a  
32 person within this State:

*supply, direct  
to person using  
crimes*

*beyond  
conspiracy*

-8-

1 any writings, signals, pictures, sounds, or electronic or  
2 electric impulses by means of wire, radio, or television  
3 communications for the purpose of executing the scheme or  
4 artifice.

5 (2) A scheme or artifice to defraud using  
6 electronic transmissions is deemed to occur in the county  
7 from which a transmission is sent, if the transmission is  
8 sent from within this State, the county in which a person  
9 within this State receives the transmission, and the  
10 county in which a person who is within this State is  
11 located when the person accesses a transmission.

12 (3) Wire fraud is a Class B felony.

13 (b) Mail fraud.

14 (1) A person commits mail fraud when he or she:

15 (A) devises or intends to devise any scheme or  
16 artifice to defraud or to obtain money or property  
17 by means of false or fraudulent pretenses,  
18 representations or promises, or to sell, dispose of,  
19 loan, exchange, alter, give away, distribute,  
20 supply, or furnish or procure for unlawful use any  
21 counterfeit obligation, security, or other article,  
22 or anything represented to be or intimidated or held  
23 out to be such counterfeit or spurious article; and

24 (B) for the purpose of executing such scheme  
25 or artifice or attempting so to do, places in any  
26 post office or authorized depository for mail matter  
27 within this State, any matter or thing whatever to  
28 be delivered by the Postal Service, or deposits or  
29 causes to be deposited in this State by mail or by  
30 private or commercial carrier according to the  
31 direction on the matter or thing, or at the place at  
32 which it is directed to be delivered by the person  
33 to whom it is addressed, any such matter or thing.

34 (2) A scheme or artifice to defraud using a

*leave  
mail  
out*

1 government or private carrier is deemed to occur in the  
2 county in which mail or other matter is deposited with  
3 the Postal Service or a private commercial carrier for  
4 delivery, if deposited with the Postal Service or a  
5 private or commercial carrier within this State and the  
6 county in which a person within this State receives the  
7 mail or other matter from the Postal Service or a private  
8 or commercial carrier.

9 (3) Mail fraud is a Class B felony.

22 (d) The period of limitations for prosecution of any  
23 offense defined in this Section begins at the time when the  
24 last act in furtherance of the scheme or artifice is  
25 committed.

26 (e) In this Section:

27 (1) "Scheme or artifice to defraud" includes a  
28 scheme or artifice to deprive another of the intangible  
29 right to honest services.

1 Sec. 943.95. This Act takes effect upon becoming law."

P/C to Scott

3/15/05

- (1) Want to add new crimes even if they duplicate current law - yes
- (2) Want mail & wire fraud generally or just with respect to financial institutions?  
can drop mail fraud  
keep & update wire fraud - just with respect to financial institutions
- (3) will revise penalties

**Ryan, Robin**

---

**From:** Manley, Scott  
**Sent:** Friday, March 18, 2005 2:20 PM  
**To:** Ryan, Robin  
**Subject:** FW: financial crimes bill

Robin,

Jay in Senator Stepp's office sitting in here on Scott's computer. I understand you are expecting these suggested changes...

-----Original Message-----

**From:** Rose Oswald Poels [mailto:ropoels@wisbank.com]  
**Sent:** Friday, March 18, 2005 11:47 AM  
**To:** Manley, Scott  
**Cc:** Mike Semmann  
**Subject:** financial crimes bill

Scott,

Below are my suggested changes to track with the changes made by the Truth in Sentencing law. Let me know if there are any questions as I'm not a criminal lawyer so my changes may not be perfect.

The page numbers and line numbers track with the document Mike sent you not with what the real page numbers turn out to be when printed in Word.

page 5 line 31 change dollar amount from \$300 to \$500.

page 6, line 2, change dollar amount from \$300 to \$500.

page 6, line 6 should be Class I Felony

page 6 line 15, dollar amount from \$300 to \$500 and should be Class H felony.

page 6, lines 17 and 20 change dollar amount from \$300 to \$500

page 6 line 29, should be Class B felony.

page 7 line 1, should be Class C felony.

I believe these are all the needed changes but again, please let me know if I need to fix anything more. I am out of the office for a while this afternoon at an offsite meeting but intend to be back later in the day and all next week.

Thank you!

Rose

3/21/2005

Rose Oswald Poels  
Vice President - Legal  
Wisconsin Bankers Association  
4721 South Biltmore Lane  
P.O. Box 8880  
Madison, WI 53708-8880  
608/441-1200  
<<<http://www.wisbank.com/>>>  
\*\*\*\*\*

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State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-2465/P1

RLR:.....

lmk

In 3/24/05  
Wanted Soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

GenCat

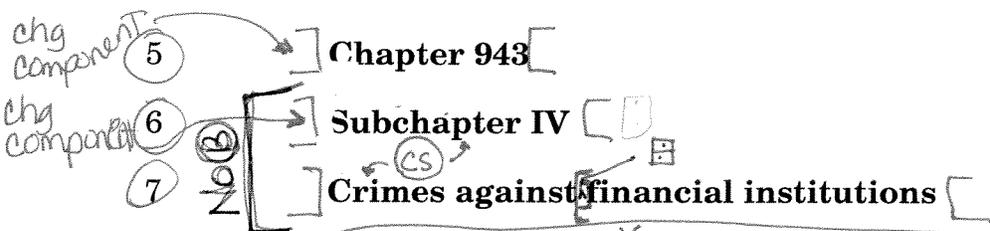
1 AN ACT ...; relating to: offenses against financial institutions and providing  
2 penalties. ✓

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version. ✓

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. Subchapter IV of chapter 943 [precedes 943.80] of the statutes is  
4 created to read:



8 SECTION 2. 943.80 of the statutes is created to read:

9 943.80 Definitions. (1) In this subchapter:

1 (a) "Financial crime" means a crime under ss. 943.81 to 943.87 or any other  
2 felony committed against a financial institution or an attempt or conspiracy to  
3 commit one of these crimes. ✓

4 (b) "Financial institution" has the meaning given in s. 214.01 (1) (jn). ✓

\* \*\*\*\*NOTE: This definition covers banks, savings banks, savings and loan  
associations, trust companies, and credit unions. I did not include "or other depository  
of money, or medium of savings and collective investment," in the definition, because I  
think the addendum is too broad and unnecessary.

5 SECTION 3. 943.81 of the statutes is created to read:

6 **943.81 Theft from a financial institution.** Whoever knowingly uses,  
7 transfers, conceals, or takes possession of money, funds, credits, securities, assets,  
8 or property owned or held in trust by a financial institution, without authorization  
9 from the financial institution, and with intent to convert it to his or her own use or  
10 to the use of any person other than the owner or financial institution, may be  
11 penalized as provided in s. 943.90.

\*\*\*\*NOTE: This bill uses language from the theft statute under 943.20 (1) to describe  
misappropriation. ✓

12 SECTION 4. 943.82 of the statutes is created to read:

13 **943.82 Bribery involving a financial institution.** (1) Whoever confers,  
14 offers, or agrees to confer a benefit on an employee, agent, or fiduciary of a financial  
15 institution without the consent of the financial institution and with intent to  
16 influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of  
17 the institution may be penalized as provided in s. 943.90. ✓

18 (2) Any employee, agent, or fiduciary of a financial institution who without the  
19 consent of the financial institution solicits, accepts, or agrees to accept any benefit  
20 from another person pursuant to an agreement that the employee, agent, or fiduciary

1 will act in a certain manner in relation to the affairs of the financial institution may  
2 be penalized as provided in s. 943.90.

\*\*\*NOTE: The bill makes the penalty for bribery contingent on the value of the benefit offered to or accepted by the employee, agent, or fiduciary. Is this what you intend? ✓

3 **SECTION 5. 943.83 of the statutes is created to read:**

4 **943.83 Fraud against a financial institution.** Whoever with intent to  
5 defraud a financial institution or another person obtains money, funds, credits,  
6 securities, assets, or property owned or held in trust by a financial institution by  
7 making a false representation which the actor knows is false may be penalized as  
8 provided in s. 943.90. A promise made with intent not to perform it and made as part  
9 of a false and fraudulent scheme is a false representation. ✓

✓ \*\*\*NOTE: This section uses language from the theft by fraud statute under s. 943.20 (1) (d). The bill does not include the provision that fraud includes "a scheme or artifice to deprive a financial institution of the intangible right to honest services," ✓ because I do not understand what that means. (I assume this language is based on federal criminal statutes.) ✓ Instead I copied the provision from 943.20 (1) (d) that a false representation includes a promise made with intent not to perform it -- is this what you intend? ✓

10 **SECTION 6. 943.84 of the statutes is created to read:**

11 **943.84 Loan fraud. (1)** Whoever with intent to defraud a financial institution  
12 knowingly overvalues or makes a false statement concerning any land, security, or  
13 other property for the purpose of influencing the financial institution to take or defer  
14 action in connection with the land, security, or property is guilty of a \_\_\_\_.

\*\*\*NOTE: I did not list all the actions a financial institution might take on the basis of a false statement (issuing a loan, making a purchase, providing a discount, etc.) ✓ because the list may be incomplete and some of the terms used may require definitions. Does this format work, or is it too broad? ✓

\*\*\*NOTE: The proposed language makes the penalty contingent upon the value of the fraud. What is the value of the fraud under this crime -- the amount by which the security is overvalued? ✓ Once I establish the base penalty for loan fraud, I will add an exception providing that the penalty for loan fraud involving residential real estate is a Class C felony as requested in the drafting instructions. ✓

15 **SECTION 7. 943.85 of the statutes is created to read:**

1           **943.85 Concealment of collateral.** Whoever with intent to defraud a  
 2 financial institution knowingly conceals, removes, disposes of, or converts to his or  
 3 her own use or to the use of another person, any property mortgaged to, pledged to,  
 4 or held by the financial institution may be penalized as provided in s. 943.90.

5           **SECTION 8.** 943.86 of the statutes is created to read:

6           **943.86 Robbery of a financial institution.** Whoever by use of force or threat  
 7 to use imminent force takes or attempts to take from a person or in the presence of  
 8 a person money or property that is owned or held in trust by a financial institution  
 9 is guilty of Class C felony.

\*\*\*NOTE: The proposed language for financial institution robbery references both robbery and extortion. I would like to make extortion a separate crime from robbery. Generally extortion involves a threat to cause injury to a person, damage to property, or harm to a business with intent that the threat compel the victim to act. If you want to include extortion against a financial institution in the bill, what types of threatened harm do you want to cover? Should extortion cover threats against individuals or just against a financial institution? See Wisconsin's extortion statute under s. 943.30 for examples.

10           **SECTION 9.** 943.87 of the statutes is created to read:

11           **943.87 Wire fraud.** (1) In this subsection, "pattern of financial fraud" means  
 12 the commission of <sup>2</sup>two or more violations of s. 943.81, at least one of which occurs  
 13 after the effective date of this subsection... [revisor inserts date], that have the same  
 14 or similar intents, results, accomplices, victims, or methods of commission or  
 15 otherwise are interrelated by distinguishing characteristics.

16           (2) Whoever transmits or causes to be transmitted electrically,  
 17 electromagnetically, or by light a signal, writing, image, <sup>move</sup>data, or <sup>move</sup>sound in  
 18 furtherance of a pattern of financial fraud is guilty of a Class B felony if any of the  
 19 following apply:

20           (1) The transmission is from within this state.

21           (2) The transmission is received within this State.

1 (3) It is reasonably foreseeable that the transmission will be accessed by a  
2 person or machine within this state. ✓

\*\*\*NOTE: Please see the note below regarding Class B felonies.

\*\*\*NOTE: This section uses language from s. 409.102 (1) (ts) 2. to cover  
transmissions by wire, radio, television, cable, satellite and other wireless systems. ✓

\*\*\*NOTE: What activities do you intend to have prosecuted under this section? ✓

3 SECTION 10. 943.88 of the statutes is created to read:

4 943.88 Continuing financial crimes enterprise. Whoever within an 18<sup>7</sup>  
5 month period commits ~~three~~<sup>3</sup> or more financial crimes that have the same or similar  
6 intents, results, accomplices, victims, or methods of commission, or that are  
7 otherwise interrelated by distinguishing characteristics is guilty of a Class C felony. ✓  
8 At least one of the crimes must be committed on or after the effective date of this  
9 section... [revisor inserts date]. Acts that occur at the same time and place and that  
10 may form the basis for offenses punishable under more than one statutory provision  
11 may count for only one financial crime. ✓

\*\*\*NOTE: I assume that you want to require that the three crimes must be part of  
a common scheme. ✓ Otherwise this section just functions as a penalty enhancer. ✓ I used  
language from s. 946.82 (continuing criminal enterprise) to describe a scheme. I also  
included language from s. 946.82 (3) prohibiting counting one act as more than one of the  
three requisite offenses.

12 SECTION 11. 943.89 of the statutes is created to read:

13 943.89 Organizer of a continuing financial crimes enterprise. Whoever  
14 commits ~~three~~<sup>3</sup> or more financial crimes within an 18<sup>7</sup>-month period is guilty of a Class  
15 B felony if all of the following conditions apply: ✓  
16 (a) Each of the crimes is committed in concert with a person whom the actor  
17 supervises, organizes, finances, or manages. ✓ The person need not be the same for  
18 each of the crimes. ✓

1 (b) The crimes are committed with similar intents, results, victims, or methods  
 2 of commission, or are otherwise related by distinguishing characteristics. ✓

3 (c) At least one of the crimes is committed on or after the effective date of this subsection  
 4 paragraph... [revisor inserts date].

\*\*\*NOTE: This section also uses the language from s. 946.82 to describe a common scheme. ✓

\*\*\*NOTE: Class B felonies are for violent crimes (second degree intentional homicide, reckless homicide, first degree sexual assault, kidnapping, and taking a hostage). Do you want a lower penalty for organizing a continuing financial crimes enterprise. The penalty for continuing criminal enterprise under s. 946.84 and 946.85 starts at a Class E felony, though the fine may be increased based on the value of the criminal activity. ✓

SECTION 12. 943.90 of the statutes is created to read:

943.90 Penalties. Whoever violates s. 943.81 to 943.85 is guilty of the following:

(1) If the value of the money, funds, credits, securities, assets, property, or benefit does not exceed \$500, a Class C misdemeanor. ✓

(2) If the value of the money, funds, credits, securities, assets, property, or benefit does not exceed \$500, and the person has previously been convicted under s. 943.10, 943.20, 943.32, or ss. 943.81 to 943.87, a Class I felony. ✓

\*\*\*NOTE: The proposed language provides for an enhanced penalty if the person has a prior conviction for theft, robbery, burglary, or possession of burglary tools. Many of the crimes under chapter 943 are theft or burglary crimes. Do you want to cover prior convictions for all forms of theft and burglary, for example theft of farm raised fish (s. 943.74), theft of library material (s. 943.61), or theft of cable television services (943.46)? Please provide some guidance on which prior convictions you want to count? ✓

(3) If the value of the money, funds, credits, securities, assets, property, or benefit exceeds \$500 but does not exceed \$10,000, a Class H felony. ✓

(4) If the value of the money, funds, credits, securities, assets, property, or benefit exceeds \$10,000 but does not exceed \$100,000, a Class C felony. ✓

1           (5) If the value of the money, funds, credits, securities, assets, property, or  
2 benefit exceeds \$100,000, a Class B felony. ✓

\*\*\*NOTE: These penalties, especially for crimes involving values exceeding \$10,000, are significantly higher than the penalties for theft under s. 943.20. ✓ For example, the penalty for any theft involving more than \$10,000 is a Class G felony under s. 943.20. Please see the preceding note on Class B felonies. ✓

\*\*\*NOTE: A person may be prosecuted for conspiracy to commit a financial institutions crime under s. 939.31, stats., so I did not include any language in this new subsection regarding conspiracy. Similarly, I did not include a provision regarding the statute of limitations, because I think it is clear that for continuing crimes the statute of limitations starts running when the last offense is completed. ✓

3

4

(END)

D - Note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2465/P1dn

RLR:.....

mk

(date)

Scott,

Do you wish to have any of the following provisions that apply to convictions for theft or robbery apply to any of the crimes created in the bill? ✓

s. 895.80 (1) – providing a private cause of action for certain crimes including theft under s. 943.20 ✓

s. 969.08 (10) – bail revocation for serious crimes ✓

s. 973.03 (5) – bans imposing intermittent versus continuous jail sentences for persons who commit serious crimes ✓

s. 949.165 – requiring that a person convicted of a serious crime must pay any proceeds for book or movie deal regarding the crime to the state ✓

s. 949.03 – authorizing the state to pay an award to a person who is injured or killed while trying to prevent certain crimes ✓

s. 946.82 (4) – crimes punishable under racketeering ✓

s. 941.38 – a person may be convicted for soliciting a child to participate in criminal gang activity if the person solicits the child to commit certain offenses including theft ✓

s. 895.77 – private cause of action for injury resulting from criminal gang activity, as defined in s. 939.22 ✓, 941.38(1)(b)

s. 938.18 (1) (a) – allows prosecution in adult court of a juvenile who commits a crime included in the definition of criminal gang activity ✓

s. 949.291 (1) (b) – prohibits a violent felon from possessing body armor ✓

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2465/P1dn

RLR:lmk:ch

April 15, 2005

Scott,

Do you wish to have any of the following provisions that apply to convictions for theft or robbery apply to any of the crimes created in the bill?

s. 895.80 (1) – providing a private cause of action for certain crimes including theft under s. 943.20

s. 969.08 (10) – bail revocation for serious crimes

s. 973.03 (5) – bans imposing intermittent versus continuous jail sentences for persons who commit serious crimes

s. 949.165 – requiring that a person convicted of a serious crime must pay any proceeds for book or movie deal regarding the crime to the state

s. 949.03 – authorizing the state to pay an award to a person who is injured or killed while trying to prevent certain crimes

s. 946.82 (4) – crimes punishable under racketeering

s. 941.38 – a person may be convicted for soliciting a child to participate in criminal gang activity if the person solicits the child to commit certain offenses including theft

s. 895.77 – private cause of action for injury resulting from criminal gang activity, as defined in s. 941.38 (1) (b)

s. 938.18 (1) (a) – allows prosecution in adult court of a juvenile who commits a crime included in the definition of criminal gang activity

s. 941.291 (1) (b) – prohibits a violent felon from possessing body armor

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
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MEMORANDUM

TO: Senator Cathy Stepp

FROM: Mike Semmann and Rose Oswald Poels  
Wisconsin Bankers Association

DATE: November 16, 2005

RE: Financial Crimes legislation – LRB2465/P1

The Wisconsin Bankers Association (WBA) appreciates the opportunity to comment on the draft financial crimes legislation, LRB 2465/P1. In addition, WBA is aware of some proposed penalty language submitted by the Wisconsin Department of Financial Institutions (DFI) that they would like to see incorporated into this bill. WBA is not opposed to the inclusion of the suggestions made by DFI to this bill.

① WBA has the following comments with regard to the bill draft. First, with regard to the drafter's note dated April 15, 2005, WBA would like to have all the provisions listed apply to the crimes created in this bill. WBA appreciates the drafter pointing these crimes out and believes it to be a good suggestion.

The remainder of this memo will address the specific questions contained in the text of the bill draft. The first note appears in the definition section. While WBA agrees that the addendum language is probably not necessary, and may therefore be excluded, WBA would like to see a reference added to the definition for affiliates of financial institutions. WBA believes that it is just as important to include in the definition of "financial institution" those entities that are affiliated with banks since the same type of crimes may be perpetrated against them. Specifically, WBA suggests the following language.

✓ ② "Financial institution" means a bank, a savings bank, a savings and loan association, or a trust company whether chartered under the laws of this state, another state or territory or under the laws of the United States and a company that controls, is controlled by or is under common control with a bank, a savings bank, a savings and loan association, or a trust company.

*excludes credit unions*

✓ ③ With regard to proposed sec. 943.82, Stats., related to bribery, WBA believes that the main point here is to deter the act itself. Having said that, WBA also believes it is appropriate to give judges the discretion to issue sentences appropriate with the severity of the crime. However, WBA believes that the sentencing discretion

should be directly tied to the value of the harm suffered by the institution and not based on the value of the benefit offered to the employee, agent or fiduciary. *what if no harm?*

4

With regard to proposed sec. 943.83, Stats., WBA would like to see it re-drafted to not only be consistent with language first submitted, but also expanded to be consistent with language recently enacted in the State of Idaho. As a result, WBA suggests the following language in place of proposed sec. 943.83, Stats..

Fraud against a financial institution. Whoever does any of the following may be penalized as provided in s. 943.90. It is unlawful for any person, directly or indirectly to:

*intent?*

- (a) employ any device, scheme or artifice to defraud a financial institution, or
- (b) obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations or promises, or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument; or
- (c) falsely represent that a person is a financial institution or a representative of a financial institution, for the purpose of obtaining money, goods, or services from any person; or
- (d) obtain or record or attempt to obtain or record, personal identifying information of another person without the authorization of that person, for the purposes of obtaining money, goods, or services from any person, through a false or fraudulent representation that the person doing so is a financial institution. "Personal identifying information" has the same meaning as set forth in s.943.201(1)(b), Stats.; or
- (e) fraudulently make, emboss, encode or use a financial transaction card, financial transaction card account number, personal identification code or credit card sales draft, for the purpose of obtaining money, goods or services from any person; or
- (f) while serving as an employee, agent or representative of a financial institution, obtain or attempt to obtain the money, funds, credits, assets, securities, or other property owned by, held, by or under the custody or control of, the financial institution by means of false or fraudulent pretenses, representations or promises or by means of any fraudulent device, scheme or artifice, or through the use of a fraudulent monetary instrument.

*copy attempt in 939 by making penalty for attempt same as for completed crime*

*fake rep. no for info to obtain personal ID info.*

*new def from (b) except actor is employee*

5

The concept behind proposed sec. 943.84, Stats., related to loan fraud, is that the crime occur at the time of or after origination of the loan, including through loan servicing and workout phases. As a result, while WBA agrees that the list of all actions may not be all-inclusive, WBA believes it necessary to at least add the word "any" before "action" to more adequately clarify that the fraud can occur at a time beyond origination of a loan. With regard to the question related to what the

value of the fraud here should be, WBA suggests that the value of the fraud be directly tied to the loan amount.

6 Proposed sec. 943.86, Stats., deals solely with robbery as the drafter indicated she would prefer to separate out extortion from robbery. WBA agrees with that suggestion. The types of threatened harm that WBA believes could occur against a financial institution in the context of extortion are both financial (i.e. cash from the institution or employee of institution) and bodily injury to an employee of an institution. As a result, extortion should cover threats against employees or agents of a financial institution as well as the institution itself.

7 Proposed sec. 943.87, Stats., relates to wire fraud. WBA believes it should be clear here that if the taking of funds occurs in Wisconsin, then Wisconsin should have jurisdiction to prosecute. WBA would ask the drafter to be sure that this intent is clearly covered by the language as written. The types of activities that could be prosecuted under this section are wire fraud (obviously) or fraud committed through use of the automated clearing house (ACH) system. WBA is unclear as to why there is a reference in this section to only a violation of sec. 943.81, Stats., rather than the other potential crimes proposed in the bill, for example, fraud or loan fraud in secs. 943.83 and 943.84, Stats. Finally, with regard to penalty, WBA would suggest that the penalty be adjusted from a Class B felony to a Class E through I felony based on the value of the criminal activity.

*Purpose to get at activities outside wis? or to add specific penalty for elec transmission*

8 WBA suggests some changes to proposed secs. 943.88, and 943.89, Stats., related to a continuing financial crimes enterprise. First, WBA suggests the removal of the following language, "that have the same or similar intents, results, accomplices, victims, or methods of commission, or that are otherwise interrelated by distinguishing characteristics", and "Acts that occur at the same time and place and that may form the basis for offenses punishable under more than one statutory provision may count for only one financial crime." In proposed sec. 943.89, Stats., WBA would like subparagraph (2) to be deleted. WBA did not intend in these sections that the three crimes had to be part of a common scheme. WBA also agrees with the comment regarding the penalty here. As a result, the penalty can be changed from a Class B felony to one that would start at a Class E felony and be increased from there based on the value of the criminal activity. The same penalty adjustment could be made in sec. 943.88, Stats.

9 Before we address penalties in this memo, WBA would like to see mail fraud added as a crime in this bill. Specifically, WBA suggests the following language.

10 Mail Fraud. Whoever places in any post office or authorized depository for mail matter within this State, any matter or thing whatever to be delivered by the Postal Service, or deposits or causes to be deposited in this State by mail or by private or commercial carrier according to the direction on the matter or thing, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, with intent to

look through 943

943 38  
39  
41

defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit obligation, security or other article, or anything represented to be or intimidated or held out to be such counterfeit or spurious article, is guilty of a Class [E through I] felony (based on the value of the criminal activity).

11.

In addition, WBA would like to see added to this bill clarification related to customer indemnification. Specifically, WBA suggests the following language be added to the bill.

Customer indemnification. In the event a financial institution indemnifies its customer for damages caused by a violation of this act, or assumes the loss caused its customer by a violation of this act, the financial institution shall be entitled to sue the violator, at law or in equity, to recover any actual damages suffered by its customer, plus costs and attorney's fees incurred in bringing the action.

12.

With regard to the note after proposed sec. 943.90(2), Stats., regarding prior convictions, WBA believes that it should cover prior convictions for all forms of theft and burglary even though some may not be directly related to stealing money, like theft of farm raised fish. WBA believes that the fact that someone is prone to theft, regardless of the form or type, should not be ignored if they subsequently perpetrate a financial crime as described in this subchapter. Therefore, an enhanced penalty for a person with a prior conviction of all forms of theft and burglary is appropriate.

13.

WBA suggests the following corrections be made to the penalty classifications set forth in proposed sec. 943.90, Stats. For subparagraph (1), change it from a Class C misdemeanor to a Class A misdemeanor; change the penalty in subparagraph (4) from a Class C felony to a Class G felony; change the penalty in subparagraph (5) from a Class B felony to a Class E.

Again, WBA greatly appreciates the opportunity to provide comments on the draft legislation. Please do not hesitate to contact us if you have further questions.

Cc: Representative Jean Hundertmark

Meeting 12/8/05  
Jay (Stepp's office)  
WBK: Rose Oswald Polk  
Michael Semmann

Questions for meeting with Jay and Bankers Association on LRB-2465

#3 Bribery

Wants to make penalty based on value of harm suffered by financial institution, not based on value of benefit offered to employee.

If no harm done, then crime is still committed but, no penalty authorized—this doesn't make sense.

Possibilities: Flat penalty, make harm an element of the crime (how would attempt work)  
*Maybe possible to value the intended conduct (but still what if doesn't harm institution, just violates rules)*

If employee is involved in crime, can convict of theft or fraud (based on value) – seems might just want a flat penalty.

#4 Fraud (b) covers (a) so can eliminate (a)

(a) why do you need to employ a device, scheme, or artifice – why not just criminalize defrauding a financial institution. Seems like is just a very broad version that covers (b)

(c) false representation for purpose of obtaining money etc. – what if no harm done, penalty is based on value of money obtained? What if no specific value intended?

(d) what does this mean – actor represents himself as a FI for purpose of getting personal identifying information – is that enough or must their also be intent to use information to get money. Also, since actor is misrepresenting self, person is most likely giving up information voluntarily, so wouldn't be without authorization. (who is the victim, the person whose information is taken, or person whose money is taken)

elim. authorization element & end after "fraudulent rep"

(e) Isn't much of this covered under s. 943.41 (Financial transaction card crimes)? Make all verbs modify nouns correctly? What is a credit card sales draft?

(f) is only different from (b) in that actor is an employee – but penalty is no different, so what is the purpose of (f)?

In fraud language refer to property "owned by or under the custody or control of a FI" In theft, I say owned or "held in trust by a FI" -- the language should be the same, which do they want. (custody/control is federal law)

use everywhere

Issue of attempt in general (where have obtain or attempt to obtain – attempt already covered in 939 – is intent to make penalty same as for completed crime – should look at this across the bill)

action in connection w/ any loan or application

#5 Loan fraud

With intent to defraud a FI knowingly overvalues or makes a false statement concerning any land, security, or other property for the purpose of influencing the FI to take or defer any action in connection with a (potential or existing) loan may be penalized under s. 943.90 based on the value of the loan.

#6 Extortion

Extortion involves threatening some harm with intent to get money or compel a person to act against his or own will. Here intent of threat is to get money from financial institution – is physical threat to employee the only type of threat intend to cover? Should it cover

want it broad if

other type of threat – to expose secret information? Are there other purposes beyond getting money? Ex, getting bank to give loan.

#### #7 Wire fraud

Is goal to add additional penalty for conducting fraud by means of wire, or to specify who prosecutes crime, or both?

Presumably I should take out “pattern of financial fraud” – should the crime cover conspiring by means of wire in addition to committing crime by means of wire?

Can put jurisdiction issues in 939.03.

*meant to cover ch. 410 wire transfers*

*/both*

#### #8 Continuing financial enterprise

I misunderstood this to require a common scheme.

It looks like WBA just wants a penalty enhancer (for 3<sup>rd</sup> and subsequent financial crimes offense, penalty is greater). Can either make it greater by assigning Class E felony, or by adding to sentence. If make it a Class E felony it will have no impact on highest value crimes.

*use 939.62*

Already have an enhancer for lowest level penalty based on value – make sure these provisions work together.

What does it mean to “start” at an E felony.

Since not requiring that 3 offenses be part of different transactions, could convict of three offenses for one transaction (theft, bribery, wire fraud) – is this what is intended?

#### #9 Organizer of financial crimes

The model language does require common scheme if person with who organizes is different

If crime is only conspiracy (which may be what this crime is mostly intended to cover) then how do you know the value of the offense, and hence the penalty.

#### #10 Mail Fraud

Confirm that covering other delivery companies (fed-ex, UPS) not just USPS

Presumably only applies to financial institution crimes

Should mirror wire fraud?

Do you really want to introduce new language for violation or use language in rest of subchapter – i.e. use mail to conduct theft, fraud, loan fraud etc.

*- yes but also cover other crimes in 943 - esp - counterfeiting checks*

#### #11 Indemnification

Should this cover any damages resulting from the crime or just the value of the property/money taken?

How does this provision fit with rights of insurance company to sue if it compensates financial institution?

Does person have to be convicted of crime for this provision to apply?

**Ryan, Robin**

---

**From:** Rose Oswald Poels [ropoels@wisbank.com]  
**Sent:** Tuesday, December 27, 2005 4:05 PM  
**To:** Ryan, Robin  
**Subject:** RE: Fraud provision in

Robin,

I finally had a chance to look at this and while I realize you are out of the office all week, I thought it best to still send my email response now while I'm on the subject!

With regard to the changes that you made with what would now be (1), the only comment I would have is that the "attempt to" notion is not included in this section. I originally had "obtains or attempts to obtain" for what is now (1) and am wondering if there is a reason as to why this cannot be included in this section?

I am fine with what is now (2).

With regard to my (d), I have two comments. First, as stated above, my original draft had "obtain or record or attempt to obtain or record." Is there a reason as to why this could not be included in this section? Second, I agree that it is not much different from s. 943.201(2). In looking back at my notes, I believe what we intended is to have an enhanced penalty if this information is obtained by someone purporting to be from the financial institution. If you can incorporate that notion either in your new (2) or in s. 943.201(2), that is fine with me.

Finally, I did look through s. 943.41 and believe it more than adequately addresses what I had in my (e) so we can eliminate (e) from the list under "fraud against financial institutions."

I believe I have answered all your questions. Thank you very much for your diligence and insights on this bill! I greatly appreciate your help.

If you have further questions, do not hesitate to contact me at [ropoels@wisbank.com](mailto:ropoels@wisbank.com) or by phone direct at 441-1205.

Thanks again,

Rose

Rose Oswald Poels  
Wisconsin Bankers Association  
4721 South Biltmore Lane  
Madison, WI 53718  
(608) 441-1200  
[www.wisbank.com](http://www.wisbank.com)

*Phone call w/ Rose 1/3/06  
OK to have general 939.32  
provisions apply to attempt  
- basically half the penalty*

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**From:** Ryan, Robin [mailto:Robin.Ryan@legis.state.wi.us]  
**Sent:** Tuesday, December 20, 2005 2:10 PM  
**To:** Rose Oswald Poels  
**Subject:** RE: Fraud provision in

Rose, I will be in through Thursday, and out next week. Whatever we don't get finished this week, we can wrap-up the first week in January.

I hope you recover quickly from sickness.

01/04/2006

Robin

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**From:** Rose Oswald Poels [mailto:ropoels@wisbank.com]  
**Sent:** Tuesday, December 20, 2005 1:43 PM  
**To:** Ryan, Robin  
**Subject:** RE: Fraud provision in

Robin,

I have not looked at this yet and was out sick yesterday. I am a bit back-logged today but hope to get to reviewing this yet this week. Are you in all week or do you have some vacation time? Let me know and I'll try and get to this ASAP to work with your schedule. I am sorry that I'm holding this up –

Rose

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**From:** Ryan, Robin [mailto:Robin.Ryan@legis.state.wi.us]  
**Sent:** Wednesday, December 14, 2005 3:18 PM  
**To:** Rose Oswald Poels  
**Subject:** Fraud provision in

Hi Rose,

Here is the current status of "fraud against financial institutions" in the bill.

We eliminated (a) from your memo because it is covered by (b), so the first part of the fraud provision is:

(1) Whoever obtains money, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises, or by use of any fraudulent device, scheme, artifice, or monetary instrument may be penalized as provided in s. 943.90.

The next part is your (c)

(2) Whoever falsely represents that he or she is a financial institution or a representative of a financial institution for the purpose of obtaining money, goods, or services from any person is guilty of Class H felony.

We eliminated the authorization requirement from (d) because I was concerned that if a criminal attempts to obtain personal identifying information from a person by pretending to be a financial institution, the person is going to authorize the criminal to record the information, because the person thinks the criminal is a bank. Others at the meeting also suggested ending the paragraph after "through a false or fraudulent representation." What's left after the deletions is:

"Obtains or records an individual's personal identifying information, as defined in s. 943.201 (1) (b), for the purpose of obtaining money, goods, or services from any person by means of a false or fraudulent representation."

This doesn't have any specific link to financial institutions and isn't much different from s. 943.201 (2). Is this what you want? If you just want to cover instances of criminals obtaining other peoples personal identifying information by pretending to be a bank, I can add that to sub. (2)...whoever falsely represents that he is a financial institution for the purpose of obtaining recording another's personal identifying information.....

01/04/2006

Have you had a chance to look at whether s. 943.41 covers the material you had under (e) in your memo.

I will be in Thurs. but not Fri.

Thanks,  
Robin Ryan  
Legislative Reference Bureau  
261-6927

From the U.S. Code Online via GPO Access  
 [wais.access.gpo.gov]  
 [Laws in effect as of January 24, 2002]  
 [Document not affected by Public Laws enacted between  
 January 24, 2002 and December 19, 2002]  
 [CITE: 18USC1341]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 63--MAIL FRAUD

Sec. 1341. Frauds and swindles

Whoever <sup>1</sup> having devised or intending to devise any scheme or artifice to defraud, or for <sup>2</sup> obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or <sup>3</sup> to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, <sup>a</sup> places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, <sup>b</sup> or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or <sup>c</sup> takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

*1 defraud  
 2 obtain money etc. by false pretense / rep.  
 3 sell, use counterfeit items*

*for purpose of committing crimes above*

(June 25, 1948, ch. 645, 62 Stat. 763; May 24, 1949, ch. 139, Sec. 34, 63 Stat. 94; Pub. L. 91-375, Sec. (6)(j)(11), Aug. 12, 1970, 84 Stat. 778; Pub. L. 101-73, title IX, Sec. 961(i), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101-647, title XXV, Sec. 2504(h), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103-322, title XXV, Sec. 250006, title XXXIII, Sec. 330016(1)(H), Sept. 13, 1994, 108 Stat. 2087, 2147; Pub. L. 107-204, title IX, Sec. 903(a), July 30, 2002, 116 Stat. 805.)

Historical and Revision Notes

1948 Act

Based on title 18, U.S.C., 1940 ed., Sec. 338 (Mar. 4, 1909, ch. 321, Sec. 215, 35 Stat. 1130).

The obsolete argot of the underworld was deleted as suggested by Hon. Emerich B. Freed, United States district judge, in a paper read before the 1944 Judicial Conference for the sixth circuit in which he said:

A brief reference to Sec. 1341, which proposes to reenact the present section covering the use of the mails to defraud. This section is almost a page in length, is involved, and contains a great deal of superfluous language, including such terms as "sawdust swindle, green

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January 24, 2002 and December 19, 2002]  
[CITE: 18USC1343]

## TITLE 18--CRIMES AND CRIMINAL PROCEDURE

## PART I--CRIMES

## CHAPTER 63--MAIL FRAUD

## Sec. 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

(Added July 16, 1952, ch. 879, Sec. 18(a), 66 Stat. 722; amended July 11, 1956, ch. 561, 70 Stat. 523; Pub. L. 101-73, title IX, Sec. 961(j), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101-647, title XXV, Sec. 2504(i), Nov. 29, 1990, 104 Stat. 4861; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107-204, title IX, Sec. 903(b), July 30, 2002, 116 Stat. 805.)

## Amendments

2002--Pub. L. 107-204 substituted ``20 years'' for ``five years''.

1994--Pub. L. 103-322 substituted ``fined under this title'' for ``fined not more than \$1,000''.

1990--Pub. L. 101-647 substituted ``30'' for ``20'' before ``years''.

1989--Pub. L. 101-73 inserted at end ``If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 20 years, or both.''

1956--Act July 11, 1956, substituted ``transmitted by means of wire, radio, or television communication in interstate or foreign commerce'' for ``transmitted by means of interstate wire, radio, or television communication''.

## Section Referred to in Other Sections

This section is referred to in sections 24, 225, 981, 982, 1510, 1514A, 1961, 2326, 2516, 3293, 3322 of this title; title 7 section 12a; title 12 sections 1785, 1786, 1787, 1821, 1828, 1829, 1831k, 1833a, 2277a-10b; title 15 sections 78o, 80b-3; title 47 sections 312, 503.

## Ryan, Robin

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**From:** Risch, Jay  
**Sent:** Friday, December 02, 2005 2:08 PM  
**To:** Ryan, Robin  
**Subject:** FW: Financial crimes

**Attachments:** Community Currency Exchange Penalties Memo - 030305.doc

Hi Robin,

Can you add this (if you don't already have it)?

---

**From:** Templeton, Carrie  
**Sent:** Wednesday, November 30, 2005 3:17 PM  
**To:** Risch, Jay  
**Cc:** 'Mike Semmann'  
**Subject:** Financial crimes

Hi Jay:

Attached is the memo I mentioned to you regarding the language DFI would like to see included in the financial crimes bill. Please let me know if you have any questions. Thanks so much.

Carrie



Community  
urrency Exchange Pe

*Carrie Templeton*  
*Department of Financial Institutions*  
*(608) 264-7800*  
*carrie.templeton@dfi.state.wi.us*

DATE: March 3, 2005

TO: Representative Jean Hundertmark  
State Representative

FROM: Mark Schlei  
Deputy General Counsel

RE: Proposed penalty language

The purpose of this memorandum is to request legislation for a penalty for violating the currency exchange statutes, 218.05, Stats. Proposed language for any legislation follows.

## I. NO PENALTY PROVISION

Under current Wisconsin statutes there are penalty provisions for violating the statutes regulated by the Licensed Financial Services and Mortgage Banking sections of the Division of Banking. These penalties are as follows:

<u>entity</u>	<u>statute</u>	<u>penalty</u>
loan company	138.09(10)	\$500 and/or 6 months
seller of checks	217.16	\$500 and/or 6 months
sales finance company	218.0161	\$25 to \$500 forfeiture
adjustment service company	218.02(10)	\$500 and/or 90 days
collection agency	218.04(12)	\$1000 and/or 6 months
mortgage lending	224.80(1)	\$2000 and/or 9 months
<b>community currency exchange</b>	<b>218.05</b>	<b>nothing</b>

As indicated, there is no penalty for violating the community currency exchange statute, s. 218.05, Stats.

## II. FEDERAL STATUTES

Federal law provides an additional ground to pursue persons engaged in money laundering if the person is in violation of state law. U.S. Code, Title 18, Part 1, Chapter 95, Section 1960 "Prohibition of unlicensed money transmitting businesses" reads as follows:

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term 'unlicensed money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and

(A) is operated without an appropriate money transmitting license in a state where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable.

### III. PROPOSED WISCONSIN STATUTE LANGUAGE

The department needs a penalty provision for violating s. 218.05, Stats., as regards community currency exchanges. This would allow the department to refer violations to a district attorney or the department of justice. The provision would also be of assistance to any U.S. Attorneys office pursuing charges related to money laundering.

Proposed language might read as follows:

**Section 218.05(15), Stats., is created to read as follows:**

**A person who violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$2,000 or imprisoned for not more than 9 months or both.**

I have recommended the higher amount here when compared with other licensed entities for the following reasons: 1) the higher punishment is similar to that enacted last year by the legislature regarding mortgage banking, so the recommended amount is keeping with the legislature's current track record; 2) the lesser amounts for our other licensed entities reflect penalties enacted a long time ago; and 3) violators of the currency exchange statute are usually engaged in more serious offenses such as money laundering for drug-related offenses or terrorism.

LRB-2965

Call with Jay 1/4/06

- Suggest having prosecutor review bill
- for ex, why have separate theft, fraud robbery provisions for financial institutions
  - use of penalty enhancers