



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2465/P1

RLR:lmk:ch

In 1/5/06
Wanted by man. 1/9/06

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMR
B>Note

community
currency
exchanges

✓

1 AN ACT *to create* subchapter IV of chapter 943 [precedes 943.80] of the statutes;
2 relating to: offenses against financial institutions and providing penalties.

Analysis by the Legislative Reference Bureau

JWS ANALYSIS → 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:

JWS 1-3 →

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

CHAPTER 943

SUBCHAPTER IV

CRIMES AGAINST

FINANCIAL INSTITUTIONS

9 **943.80 Definitions.** In this subchapter:

90
90
90

1 (1) "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.

IWS 2-3 →

4 (2) "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.

by or under the custody or control of

5 **943.81 Theft from a financial institution.** Whoever knowingly uses,
6 transfers, conceals, or takes possession of money, funds, credits, securities, assets,
7 or property owned or held in trust by a financial institution without authorization
8 from the financial institution and with intent to convert it to his or her own use or
9 to the use of any person other than the owner or financial institution may be
10 penalized as provided in s. 943.90.

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

11 **943.82 Bribery involving a financial institution.** (1) Whoever confers,
12 offers, or agrees to confer a benefit on an employee, agent, or fiduciary of a financial
13 institution without the consent of the financial institution and with intent to
14 influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of
15 the institution may be penalized as provided in s. 943.90.

16 (2) Any employee, agent, or fiduciary of a financial institution who without the
17 consent of the financial institution solicits, accepts, or agrees to accept any benefit
18 from another person pursuant to an agreement that the employee, agent, or fiduciary
19 will act in a certain manner in relation to the affairs of the financial institution may
20 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?

move to p. 3 after line 4

is guilty of a class A felony
943.90

INS 3-1 →

1 **943.83 Fraud against a financial institution.** Whoever with intent to
 2 defraud a financial institution, or an individual, obtains money, funds, credits,
 3 securities, assets, or property owned or held in trust by a financial institution by
 4 making a false representation which the actor knows is false may be penalized as
 5 provided in s. 943.90. A promise made with intent not to perform it and made as part
 6 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?

7 **943.84 Loan fraud.** Whoever with intent to defraud a financial institution
 8 knowingly overvalues or makes a false statement concerning any land, security, or
 9 other property for the purpose of influencing the financial institution to take or defer ^{any}
 10 action in connection with the land, security, or property is guilty of a _____.

INS 3-10

****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.

11 **943.85 Concealment of collateral.** Whoever with intent to defraud a
 12 financial institution knowingly conceals, removes, disposes of, or converts to his or
 13 her own use or to the use of another person, any property mortgaged to, pledged to,
 14 or held by the financial institution may be penalized as provided in s. 943.90.

material comp 2 →

15 **943.86 Robbery of a financial institution.** Whoever by use of force or threat
 16 to use imminent force takes or attempts to take from a person or in the presence of

INS 3-14

an individual

an individual

by or under the custody or control of

1 a person money or property that is owned or held in trust by a financial institution
2 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.

3 **943.87 Wire fraud. (1)** In this subsection, "pattern of financial fraud" means
4 the commission of 2 or more violations of s. 943.81, at least one of which occurs after
5 the effective date of this subsection [revisor inserts date], that have the same or
6 similar intents, results, accomplices, victims, or methods of commission or otherwise
7 are interrelated by distinguishing characteristics.

8 (2) Whoever transmits or causes to be transmitted electrically,
9 electromagnetically, or by light a signal, writing, image, sound, or data in
10 furtherance of a pattern of financial fraud is guilty of a Class B felony if any of the
11 following apply:

- 12 (a) The transmission is from within this state.
- 13 (b) The transmission is received within this state.
- 14 (c) It is reasonably foreseeable that the transmission will be accessed by a
15 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?

16 **943.88 Continuing financial crimes enterprise.** Whoever within an 18
17 month period commits 3 or more financial crimes that have the same or similar
18 intents, results, accomplices, victims, or methods of commission, or that are
19 otherwise interrelated by distinguishing characteristics is guilty of a Class C felony.

1 At least one of the crimes must be committed on or after the effective date of this
2 section ... [revisor inserts date]. Acts that occur at the same time and place and that
3 may form the basis for offenses punishable under more than one statutory provision
4 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.

5 **943.89 Organizer of a continuing financial crimes enterprise.** Whoever
6 commits 3 or more financial crimes within an 18-month period is guilty of a Class
7 ^E B felony if all of the following conditions apply:

8 (1) Each of the crimes is committed in concert with a person whom the actor
9 supervises, organizes, finances, or manages. The person need not be the same for
10 each of the crimes. ✓

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

13 ⁽²⁾ (3) At least one of the crimes is committed on or after the effective date of this
14 subsection [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.

INS
5-14

943.82 (1), 943.83
or 943.84

15 **943.90 Penalties.** Whoever violates s. 943.81 to 943.85 is guilty of the
16 following:

17 (1) If the value of the money, funds, credits, securities, assets, property, or
18 ^{loan} benefit does not exceed \$500, a Class ^A C misdemeanor.

1 (2) If the value of the money, funds, credits, securities, assets, property, or
 2 benefit ^{loan} does not exceed \$500, and the person has previously been convicted under s.
 3 943.10, 943.20, 943.32, or ss. 943.81 to 943.87, a Class I felony.

JWS
6-2

***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?

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

6 (4) If the value of the money, funds, credits, securities, assets, property, or ^{loan}
 7 benefit exceeds \$10,000 but does not exceed \$100,000, a Class ^G C felony.

8 (5) If the value of the money, funds, credits, securities, assets, property, or ^{loan}
 9 benefit exceeds \$100,000, a Class ^E 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.

JWS 6-9
10

(END)

MS
Analysis:

Crimes against financial institutions

The following are crimes under current law:

1. Theft: taking and carrying away, using, transferring, or concealing movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property. Theft ranges from a Class A misdemeanor for theft of property valued at \$2,500 or less to a Class G felony for theft of property valued at \$10,000 or more. ✓

2. Theft by fraud: obtaining another's property by intentionally deceiving the person with a false representation. The penalties are the same as for theft. ✓

3. Robbery: taking property from another person or in the presence of another person by use or threat of violence. Robbery is generally a Class E felony. ✓

Under current law a person may be convicted of theft, fraud, or robbery of a financial institution. ✓

This bill creates a new subchapter of property crimes against financial institutions. A financial institution is defined as a bank, a savings bank, a savings and loan association, or a trust company, or 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. ✓

The crimes created in the bill are:

1. Theft against a financial institution: knowingly using, transferring, concealing, or taking money, funds, or other property owned by or under the custody or control of a financial institution without authorization from the financial institution. Theft against a financial institution ranges from a Class A misdemeanor for theft of property valued at \$500 or less to a Class E felony for theft of property valued at \$100,000 or more. ✓

2. Fraud against a financial institution: obtaining money or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises; or falsely representing that one is a financial institution to obtain money or other goods, or to obtain or record a person's personal identifying information. (Class A misdemeanor to Class E felony) ✓

3. Loan fraud: knowingly overvaluing or making a false statement concerning any land, security, or other property for the purpose of influencing a financial institution to take any action in connection with a loan or loan application. (Class A misdemeanor to Class E felony) ✓

4. Concealment of collateral: knowingly concealing, removing, disposing of, or converting to one's own use any property mortgaged to, pledged to, or held by a financial institution. (Class A misdemeanor to Class E felony) ✓

5. Bribery: Conferring or offering to confer a benefit on an employee, agent, or fiduciary of a financial institution without the consent of the financial institution and with intent to influence the person's conduct in relation to the affairs of the institution. The bribery provision also prohibits an employee, agent, or fiduciary of a financial institution from agreeing to accept a benefit without the consent of the

institution in return for taking actions with respect to the institution's affairs. (Class H felony)

6. Extortion: threatening to injure an employee of a financial institution or to cause damage to the institution's property for the purpose of obtaining money or other property owned or under the custody or control of the financial institution. (Class H felony)

7. Robbery of a financial institution: taking property that is owned by or under the custody or control of a financial institution from a person by use or threat of violence. (Class C felony)

8. Mail Fraud and Wire fraud: using a wire communications system, the U.S. mail, or a commercial delivery service to further commission of any of the crimes listed above or any other felony against a financial institution; or using the U.S. Mail or a commercial delivery service to distribute or conduct other activity related to counterfeit currency, obligations, or securities. The bill also provides that the state has jurisdiction to prosecute mail or wire fraud if mail or a wire transmission is sent from this state, received in this state, or, in the case of wire fraud, if it is reasonably foreseeable that the transmission will be accessed in this state. (Class H felony)

9. Organizer of financial crimes: committing three or more financial crimes within an 18-month period in concert with a person whom the actor supervises, organizes, finances, or manages. A financial crime is any crime against a financial institution created by this bill as well as any felony against a financial institution. (Class E felony)

The bill also provides that if a person commits three or more financial crimes, as defined in item nine, against a financial institution in a 18-month period, the term of imprisonment for the third or subsequent offense may be increased by two years for a misdemeanor, four years for lesser felonies, and up to six years for more serious felonies.

The bill provides that a financial institution may bring a civil action against a person who commits a financial crime, as defined in item nine, to recover any compensation the financial institution paid to a customer as a result of the crime as well as any damages suffered by the financial institution as a result of the crime.

The penalties for the crimes mentioned above are as follows:

<u>Crime</u>	<u>Maximum Fine</u>	<u>Maximum Imprisonment</u> (For felonies, includes term of extended supervision)
Class A misdemeanor	\$10,000	Nine months
Class I felony	\$10,000	Three and one-half years
Class H felony	\$10,000	Six years
Class G felony	\$25,000	10 years or Ten
Class E felony	\$50,000	15 years or Fifteen

Check cashing businesses

Under current law, a person, other than a financial institution or credit union, that engages in the business of cashing checks and money orders must obtain a community currency exchange license and must abide by certain rules, such as a prohibition against acting as a depository for money. The bill provides a criminal penalty (a fine not to exceed \$2,000, imprisonment for not more than nine months, or both) for violating the licensing or other requirements for community currency exchanges.

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Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

1 **Ins 1-3:**

2 **SECTION 1.** 218.05 (15) of the statutes is created to read:

3 218.05 (15) A person who violates this section may be fined not more than
4 \$2,000 or imprisoned for not more than 9 months or both.

5 **SECTION 2.** 895.81 of the statutes is created to read:

6 **895.81 Indemnification of a financial institution.** A financial institution,
7 as defined in s. 943.80 (2), that compensates a customer for a pecuniary loss resulting
8 from a financial crime, as defined in s. 943.80 (1), or assumes the loss, may bring a
9 civil action against the person who committed the crime to recover the amount of the
10 loss, any other damages incurred by the financial institution as a result of the crime,
11 and the costs incurred to bring the action, including attorney's fees.

12 **SECTION 3.** 938.18 (1) (a) 1. of the statutes is amended to read:

13 938.18 (1) (a) 1. If the juvenile is alleged to have violated s. 940.03, 940.06,
14 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87, or 961.41 (1) on or
15 after the juvenile's 14th birthday.

History: 1995 a. 77, 352, 448; 1997 a. 35.

16 **SECTION 4.** 939.03 (1) (f) and (g) of the statutes are created to read:

1 939.03 (1) (f) The person violates s. 943.89 and the matter or thing is deposited
2 for delivery within this state or is received or taken within this state.

3 (g) The person violates s. 943.90 and the transmission is from within this state,
4 the transmission is received within this state, or it is reasonably foreseeable that the
5 transmission will be accessed by a person or machine within this state.

6 **SECTION 5.** 941.291 (1) (b) of the statutes is amended to read:

7 941.291 (1) (b) "Violent felony" means any felony, or the solicitation, conspiracy,
8 or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01,
9 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20,
10 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30,
11 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29,
12 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2),
13 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88,
14 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05,
15 948.06, 948.07, 948.08, or 948.30.

History: 2001 a. 95; 2003 a. 321.

16 **SECTION 6.** 941.38 (1) (b) 21. of the statutes is created to read:

17 941.38 (1) (b) 21. A crime under s. 943.81, 943.82, 943.83, 943.84, 943.85,
18 943.86, 943.87, 943.88, 943.89, or 943.90.

21 **Ins 2-3:**

22 (2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c), a
23 savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, or a trust
24 company, whether chartered under the laws of this state, another state or territory,

1 or under the laws of the United States, or a company that controls, is controlled by,
2 or is under common control with a bank, a savings bank, a savings and loan
3 association, or a trust company. ✓
4

5 **Ins 3-1:**

6 **943.82 Fraud against a financial institution.** (1) Whoever obtains money,
7 funds, credits, assets, securities, or other property owned by or under the custody or
8 control of a financial institution by means of false pretenses, representations, or
9 promises, or by use of any fraudulent device, scheme, artifice, or monetary
10 instrument may be penalized as provided in s. 943.91. ✓

11 (2) Whoever falsely represents that he or she is a financial institution or a
12 representative of a financial institution for the purpose of obtaining money, goods,
13 or services from any person or for the purpose of obtaining or recording a person's
14 personal identifying information, as defined in s. 943.201 (1) (b), is guilty of Class H
15 felony. ✓
16

17 **Ins 3-10:**

18 ~~NOT~~ a loan or loan application may be penalized as provided in s. 943.91 according
19 to the value of the loan. ✓
20

21 **Ins 3-14:**

22 **943.86 Extortion against a financial institution.** Whoever for the purpose
23 of obtaining money, funds, credits, securities, assets, or property owned by or under
24 the custody or control of a financial institution threatens to cause bodily harm to an
25 owner, employee, or agent of a financial institution or to cause damage to property

1 owned by or under the custody or control of the financial institution is guilty of a
2 Class H felony. ✓

3

4 **Ins 5-14:**

5 **943.89 Mail fraud.** ✓ Whoever does any of the following to further commission
6 of a financial crime or to sell, dispose of, loan, exchange, alter, give away, distribute,
7 supply, furnish, or procure for an unlawful purpose any counterfeit currency,
8 obligation, or security is guilty of a Class H felony: ✓

9 (1) Deposits or causes any matter to be deposited in a United States post office
10 or authorized depository for United States mail. ✓

11 (2) Deposits or causes to be deposited any matter or thing to be sent or delivered
12 by a commercial carrier. ✓

13 (3) Takes or receives any matter or a thing sent or delivered by United States
14 mail or by a commercial carrier. ✓

15 **943.90 Wire fraud against a financial institution.** ✓ Whoever transmits or
16 causes to be transmitted electrically, electromagnetically, or by light any signal,
17 writing, image, sound, or data for the purpose of committing a financial crime is
18 guilty of a Class H felony. ✓

19

20 **Ins 6-2:**

21 *NOA* of an misdemeanor or felony under s. 943.10, 943.12, 943.20 to 943.75, or 943.81
22 to 943.90, ✓

23

24 **Ins 6-9:**

1 **943.92 Increased penalty for multiple financial crimes.** If a person is
2 convicted of committing 3 or more financial crimes in an 18-month period, the term
3 of imprisonment for the 3rd or subsequent crime in the 18-month period may be
4 increased as follows: ✓

5 (1) A maximum term of imprisonment of one year or less may be increased to
6 not more than 2 years. ✓

7 (2) A maximum term of imprisonment of more than one year but not more than
8 10 years may be increased by not more than 2 years if the prior convictions were for
9 misdemeanors and by not more than 4 years if at least one of the prior convictions
10 was for a felony. ✓

11 (3) A maximum term of imprisonment of more than 10 years may be increased
12 by not more than 2 years if the prior convictions were for misdemeanors and by not
13 more than 6 years if at least one of the prior convictions was for a felony. ✓

14 **SECTION 7.** 946.82 (4) of the statutes is amended to read:

15 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
16 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
17 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),
18 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
19 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
20 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
21 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
22 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
23 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
24 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
25 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 943.81, 943.82,

1 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e),
 2 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,
 3 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
 4 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150; 2001 a. 16, 105, 109; 2003 a. 36, 321.

5 **SECTION 8. 949.03 (1) (b) of the statutes is amended to read:**

6 949.03 (1) (b) The commission or the attempt to commit any crime specified in
 7 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
 8 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
 9 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
 10 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025,
 11 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109.

12 **SECTION 9. 969.08 (10) (b) of the statutes is amended to read:**

13 969.08 (10) (b) "Serious crime" means any crime specified in s. 943.23 (1m),
 14 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
 15 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
 16 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
 17 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
 18 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,
 19 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90,
 20 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05,
 21 948.06, 948.07 or 948.30.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295; 1999 a. 32; 2001 a. 109.

22 **SECTION 10. Initial applicability.**



1 (1) The treatment of section 895.81 of the statutes, as created by this act, first
2 applies to crimes committed on the effective date of this subsection.
3

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2465/1dn
RLR:.....

Jay:

Penalties:

1. Where logical, the bill imposes a penalty based on the value of the crime. For crimes such as bribery, where the crime may be completed without causing quantifiable damage, the bill generally assigns a flat Class H felony. ✓

2. I used the penalty increases that apply under the habitual criminality penalty enhancer [s. 939.62 (2)] for the multiple financial crimes penalty enhancer under proposed s. 943.92. ✓

3. Please review the list of prior convictions under proposed s. 943.91 (2) that increase the penalty from a Class A misdemeanor to a Class I felony. ✓ The list includes convictions for burglary, possession of burglarious tools, the financial crimes created in the bill, and any felony or misdemeanor offense under the misappropriation subchapter of ch. 943, except infecting an animal with a contagious disease (s. 943.76) because it does not appear to me to be misappropriation. ✓

Fraud against a financial institution: Proposed s. 943.82 (1) does not have an intent or knowledge requirement, so a person who unwittingly helps another commit fraud could be convicted under this subsection. See the current fraud statute under s. 943.20 (1)(d), which requires intent to deceive. ✓

Robbery:

1. The bill does not require that a person know or should know that the property he or she is taking is owned by or under the custody or control of a bank, so a person who robs a bank employee of property owned by the bank while the employee is off bank grounds could be convicted of robbing a bank under proposed s. 943.87. ✓

2. The Wisconsin robbery statute, s. 943.32, requires that the person committing the crime have intent to steal. The language in the request does not require intent to steal, so I did not include it in the bill. ✓

Organizer of financial crimes: A person could be penalized under both the organizer crime and the multiple financial crimes penalty enhancement for the same three offenses. ✓ Also, because the bill does not require that the three offenses be

separate acts or transactions, both the organizer crime and the penalty enhancer could apply to one event that, for example, is also prosecuted as fraud, bribery, and wire fraud. ✓

Counterfeiting: Under proposed s. 943.89, the bill provides that using the mail to further a counterfeiting scheme is a crime, but the bill does not create a stand-alone prohibition against counterfeiting. ✓ I am not sure whether such a prohibition would be useful, or whether prosecutors already prosecute counterfeiting under a current property crimes statute. ✓

Cross-reference additions: As requested, I added the crimes created in the bill to the sections listed in the drafter's note dated April 15, 2005. ✓ Please review the additions, particularly making fraud, bribery, mail and wire fraud violent felonies that, for example bar a person from possessing body armor. ✓

Robin Ryan
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2465/1dn
RLR:lmk:ch

January 9, 2006

Jay:

Penalties:

1. Where logical, the bill imposes a penalty based on the value of the crime. For crimes such as bribery, where the crime may be completed without causing quantifiable damage, the bill generally assigns a flat Class H felony.
2. I used the penalty increases that apply under the habitual criminality penalty enhancer [s. 939.62 (1)] for the multiple financial crimes penalty enhancer under proposed s. 943.92.
3. Please review the list of prior convictions under proposed s. 943.91 (2) that increase the penalty from a Class A misdemeanor to a Class I felony. The list includes convictions for burglary, possession of burglarious tools, the financial crimes created in the bill, and any felony or misdemeanor offense under the misappropriation subchapter of ch. 943, except infecting an animal with a contagious disease (s. 943.76) because it does not appear to me to be misappropriation.

Fraud against a financial institution: Proposed s. 943.82 (1) does not have an intent or knowledge requirement, so a person who unwittingly helps another commit fraud could be convicted under this subsection. See the current fraud statute under s. 943.20 (1) (d), which requires intent to deceive.

Robbery:

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State of Wisconsin
2005 - 2006 LEGISLATURE

2
LRB-2465/1
RLR:lk:ch
keep

Wanted soon
in 1/23/06

2005 BILL

RMRE

D-Note

Regen Cat.
V+

1 AN ACT to amend 938.18 (1) (a) 1., 941.291 (1) (b), 946.82 (4), 949.03 (1) (b) and
2 969.08 (10) (b); and to create 218.05 (15), 895.81, 939.03 (1) (f) and (g), 941.38
3 (1) (b) 21. and subchapter IV of chapter 943 [precedes 943.80] of the statutes;
4 relating to: offenses against financial institutions, community currency
5 exchanges, and providing penalties.

Analysis by the Legislative Reference Bureau

Crimes against financial institutions

The following are crimes under current law:

1. Theft: taking and carrying away, using, transferring, or concealing movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property. Theft ranges from a Class A misdemeanor for theft of property valued at \$2,500 or less to a Class G felony for theft of property valued at \$10,000 or more.

2. Theft by fraud: obtaining another's property by intentionally deceiving the person with a false representation. The penalties are the same as for theft.

3. Robbery: taking property from another person or in the presence of another person by use or threat of violence. Robbery is generally a Class E felony.

Under current law a person may be convicted of theft, fraud, or robbery of a financial institution.

This bill creates a new subchapter of property crimes against financial institutions. A financial institution is defined as a bank, a savings bank, a savings

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and loan association, or a trust company, or 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.

The crimes created in the bill are:

1. Theft against a financial institution: knowingly using, transferring, concealing, or taking money, funds, or other property owned by or under the custody or control of a financial institution without authorization from the financial institution. Theft against a financial institution ranges from a Class A misdemeanor for theft of property valued at \$500 or less to a Class E felony for theft of property valued at \$100,000 or more.

2. Fraud against a financial institution: obtaining money or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises; or falsely representing that one is a financial institution to obtain money or other goods, or to obtain or record a person's personal identifying information. (Class A misdemeanor to Class E felony.)

3. Loan fraud: knowingly overvaluing or making a false statement concerning any land, security, or other property for the purpose of influencing a financial institution to take any action in connection with a loan or loan application. (Class A misdemeanor to Class E felony.)

4. Concealment of collateral: knowingly concealing, removing, disposing of, or converting to one's own use any property mortgaged to, pledged to, or held by a financial institution. (Class A misdemeanor to Class E felony.)

5. Bribery: conferring or offering to confer a benefit on an employee, agent, or fiduciary of a financial institution without the consent of the financial institution and with intent to influence the person's conduct in relation to the affairs of the institution. The bribery provision also prohibits an employee, agent, or fiduciary of a financial institution from agreeing to accept a benefit without the consent of the institution in return for taking actions with respect to the institution's affairs. (Class H felony.)

6. Extortion: threatening to injure an employee of a financial institution or to cause damage to the institution's property for the purpose of obtaining money or other property owned or under the custody or control of the financial institution. (Class H felony.)

7. Robbery of a financial institution: taking property that is owned by or under the custody or control of a financial institution from a person by use or threat of violence. (Class C felony.)

8. Mail fraud and wire fraud: using a wire communications system, the U.S. mail, or a commercial delivery service to further commission of any of the crimes listed above or any other felony against a financial institution; or using the U.S. mail or a commercial delivery service to distribute or conduct other activity related to counterfeit currency, obligations, or securities. The bill also provides that the state has jurisdiction to prosecute mail or wire fraud if mail or a wire transmission is sent from this state, received in this state, or, in the case of wire fraud, if it is reasonably foreseeable that the transmission will be accessed in this state. (Class H felony.)

BILL

9. Organizer of financial crimes: committing three or more financial crimes within an 18-month period in concert with a person whom the actor supervises, organizes, finances, or manages. A financial crime is any crime against a financial institution created by this bill as well as any felony against a financial institution. (Class E felony.)

The bill also provides that if a person commits three or more financial crimes, as defined in item 9., against a financial institution in a 18-month period, the term of imprisonment for the third or subsequent offense may be increased by two years for a misdemeanor, four years for lesser felonies, and up to six years for more serious felonies.

The bill provides that a financial institution may bring a civil action against a person who commits a financial crime, as defined in item 9., to recover any compensation the financial institution paid to a customer as a result of the crime as well as any damages suffered by the financial institution as a result of the crime.

The penalties for the crimes mentioned above are as follows:

<u>Crime</u>	<u>Maximum Fine</u>	<u>Maximum Imprisonment</u> (For felonies, includes term of extended supervision)
Class A misdemeanor	\$10,000	Nine months
Class I felony	\$10,000	Three and one-half years
Class H felony	\$10,000	Six years
Class G felony	\$25,000	Ten years
Class E felony	\$50,000	Fifteen years

Check cashing businesses

Under current law, a person, other than a financial institution or credit union, that engages in the business of cashing checks and money orders must obtain a community currency exchange license and must abide by certain rules, such as a prohibition against acting as a depository for money. The bill provides a criminal penalty (a fine not to exceed \$2,000, imprisonment for not more than nine months, or both) for violating the licensing or other requirements for community currency exchanges.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

BILL

1 **SECTION 1.** 218.05 (15) of the statutes is created to read:

2 218.05 (15) A person who violates this section may be fined not more than
3 \$2,000 or imprisoned for not more than 9 months or both.

4 **SECTION 2.** 895.81 of the statutes is created to read:

5 **895.81 Indemnification of a financial institution.** A financial institution,
6 as defined in s. 943.80 (2), that compensates a customer for a pecuniary loss resulting
7 from a financial crime, as defined in s. 943.80 (1), or assumes the loss, may bring a
8 civil action against the person who committed the crime to recover the amount of the
9 loss, any other damages incurred by the financial institution as a result of the crime,
10 and the costs incurred to bring the action, including attorney’s fees.

11 **SECTION 3.** 938.18 (1) (a) 1. of the statutes is amended to read:

12 938.18 (1) (a) 1. If the juvenile is alleged to have violated s. 940.03, 940.06,
13 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87, or 961.41 (1) on or
14 after the juvenile’s 14th birthday.

15 **SECTION 4.** 939.03 (1) (f) and (g) of the statutes are created to read:

16 939.03 (1) (f) The person violates s. 943.89 and the matter or thing is deposited
17 for delivery within this state or is received or taken within this state.

18 (g) The person violates s. 943.90 and the transmission is from within this state,
19 the transmission is received within this state, or it is reasonably foreseeable that the
20 transmission will be accessed by a person or machine within this state.

JNS 4-20 →

21 **SECTION 5.** 941.291 (1) (b) of the statutes is amended to read:

22 941.291 (1) (b) “Violent felony” means any felony, or the solicitation, conspiracy,
23 or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01,
24 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20,
25 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30,

BILL

1 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29,
2 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2),
3 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88,
4 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05,
5 948.06, 948.07, 948.08, or 948.30.

6 **SECTION 6.** 941.38 (1) (b) 21. of the statutes is created to read:

7 941.38 (1) (b) 21. A crime under s. 943.81, 943.82, 943.83, 943.84, 943.85,
8 943.86, 943.87, 943.88, 943.89, or 943.90.

9 **SECTION 7.** Subchapter IV of chapter 943 [precedes 943.80] of the statutes is
10 created to read:

CHAPTER 943

SUBCHAPTER IV

CRIMES AGAINST

FINANCIAL INSTITUTIONS

11
12
13
14
15 **943.80 Definitions.** In this subchapter:

16 (1) “Financial crime” means a crime under ss. 943.81 to 943.90 or any other
17 felony committed against a financial institution or an attempt or conspiracy to
18 commit one of these crimes.

19 (2) “Financial institution” means a bank, as defined in s. 214.01 (1) (c), a
20 savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, or a trust
21 company, whether chartered under the laws of this state, another state or territory,
22 or under the laws of the United States, or a company that controls, is controlled by,
23 or is under common control with a bank, a savings bank, a savings and loan
24 association, or a trust company.

BILL**SECTION 7**

1 **943.81 Theft from a financial institution.** Whoever knowingly uses,
2 transfers, conceals, or takes possession of money, funds, credits, securities, assets,
3 or property owned by or under the custody or control of a financial institution without
4 authorization from the financial institution and with intent to convert it to his or her
5 own use or to the use of any person other than the owner or financial institution may
6 be penalized as provided in s. 943.91.

7 **943.82 Fraud against a financial institution. (1)** Whoever obtains money,
8 funds, credits, assets, securities, or other property owned by or under the custody or
9 control of a financial institution by means of false pretenses, representations, or
10 promises, or by use of any fraudulent device, scheme, artifice, or monetary
11 instrument may be penalized as provided in s. 943.91.

12 **(2)** Whoever falsely represents that he or she is a financial institution or a
13 representative of a financial institution for the purpose of obtaining money, goods,
14 or services from any person or for the purpose of obtaining or recording a person's
15 personal identifying information, as defined in s. 943.201 (1) (b), is guilty of Class H
16 felony.

17 **943.83 Loan fraud.** Whoever with intent to defraud a financial institution
18 knowingly overvalues or makes a false statement concerning any land, security, or
19 other property for the purpose of influencing the financial institution to take or defer
20 any action in connection with a loan or loan application may be penalized as provided
21 in s. 943.91 according to the value of the loan.

22 **943.84 Concealment of collateral.** Whoever with intent to defraud a
23 financial institution knowingly conceals, removes, disposes of, or converts to his or
24 her own use or to the use of another person, any property mortgaged to, pledged to,
25 or held by the financial institution may be penalized as provided in s. 943.91.

BILL

1 **943.85 Bribery involving a financial institution.** (1) Whoever confers,
2 offers, or agrees to confer a benefit on an employee, agent, or fiduciary of a financial
3 institution without the consent of the financial institution and with intent to
4 influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of
5 the institution is guilty of a Class H felony.

6 **(2)** Any employee, agent, or fiduciary of a financial institution who without the
7 consent of the financial institution solicits, accepts, or agrees to accept any benefit
8 from another person pursuant to an agreement that the employee, agent, or fiduciary
9 will act in a certain manner in relation to the affairs of the financial institution is
10 guilty of a Class H felony.

11 **943.86 Extortion against a financial institution.** Whoever for the purpose
12 of obtaining money, funds, credits, securities, assets, or property owned by or under
13 the custody or control of a financial institution threatens to cause bodily harm to an
14 owner, employee, or agent of a financial institution or to cause damage to property
15 owned by or under the custody or control of the financial institution is guilty of a
16 Class H felony.

17 **943.87 Robbery of a financial institution.** Whoever by use of force or threat
18 to use imminent force takes from an individual or in the presence of an individual
19 money or property that is owned by or under the custody or control of a financial
20 institution is guilty of Class C felony.

21 **943.88 Organizer of financial crimes.** Whoever commits 3 or more financial
22 crimes within an 18-month period is guilty of a Class E felony if all of the following
23 conditions apply:

BILL**SECTION 7**

1 (1) Each of the crimes is committed in concert with a person whom the actor
2 supervises, organizes, finances, or manages. The person need not be the same for
3 each of the crimes.

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

6 **943.89 Mail fraud.** Whoever does any of the following to further commission
7 of a financial crime or to sell, dispose of, loan, exchange, alter, give away, distribute,
8 supply, furnish, or procure for an unlawful purpose any counterfeit currency,
9 obligation, or security is guilty of a Class H felony:

10 (1) Deposits or causes any matter to be deposited in a United States post office
11 or authorized depository for United States mail.

12 (2) Deposits or causes to be deposited any matter or thing to be sent or delivered
13 by a commercial carrier.

14 (3) Takes or receives any matter or a thing sent or delivered by United States
15 mail or by a commercial carrier.

16 **943.90 Wire fraud against a financial institution.** Whoever transmits or
17 causes to be transmitted electrically, electromagnetically, or by light any signal,
18 writing, image, sound, or data for the purpose of committing a financial crime is
19 guilty of a Class H felony.

20 **943.91 Penalties.** Whoever violates s. 943.81, 943.82 (1), 943.83, or 943.84 is
21 guilty of the following:

22 (1) If the value of the money, funds, credits, securities, assets, property, or loan
23 does not exceed \$500, a Class A misdemeanor.

24 (2) If the value of the money, funds, credits, securities, assets, property, or loan
25 does not exceed \$500, and the person has previously been convicted of an

BILL

1 misdemeanor or felony under s. 943.10, 943.12, 943.20 to 943.75, or 943.81 to 943.90,
2 a Class I felony.

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

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

7 (5) If the value of the money, funds, credits, securities, assets, property, or loan
8 exceeds \$100,000, a Class E felony.

9 **943.92 Increased penalty for multiple financial crimes.** If a person is
10 convicted of committing 3 or more financial crimes in an 18-month period, the term
11 of imprisonment for the 3rd or subsequent crime in the 18-month period may be
12 increased as follows:

13 (1) A maximum term of imprisonment of one year or less may be increased to
14 not more than 2 years.

15 (2) A maximum term of imprisonment of more than one year but not more than
16 10 years may be increased by not more than 2 years if the prior convictions were for
17 misdemeanors and by not more than 4 years if at least one of the prior convictions
18 was for a felony.

19 (3) A maximum term of imprisonment of more than 10 years may be increased
20 by not more than 2 years if the prior convictions were for misdemeanors and by not
21 more than 6 years if at least one of the prior convictions was for a felony.

22 **SECTION 8.** 946.82 (4) of the statutes is amended to read:

23 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
24 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
25 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),

BILL**SECTION 8**

1 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
2 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
3 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
4 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
5 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
6 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
7 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
8 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 943.81, 943.82,
9 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e),
10 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,
11 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
12 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

13 **SECTION 9.** 949.03 (1) (b) of the statutes is amended to read:

14 949.03 (1) (b) The commission or the attempt to commit any crime specified in
15 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
16 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
17 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
18 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025,
19 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

20 **SECTION 10.** 969.08 (10) (b) of the statutes is amended to read:

21 969.08 (10) (b) “Serious crime” means any crime specified in s. 943.23 (1m),
22 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
23 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
24 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
25 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),

BILL

1 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,
2 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90,
3 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05,
4 948.06, 948.07 or 948.30.

5 **SECTION 11. Initial applicability.**

6 (1) The treatment of section 895.81 of the statutes, as created by this act, first
7 applies to crimes committed on the effective date of this subsection.

8 (END)



2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2465/2ins
RLR:.....

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Ins 4-20:

SECTION ~~1~~ 939.32 (2m) of the statutes is created to read: ✓

939.32 (2m) MISDEMEANOR CRIMES AGAINST FINANCIAL INSTITUTION. Whoever
attempts to commit a crime under s. 943.81, 943.82 (1), 943.83, or 943.84 that is a
Class A misdemeanor under s. 943.91 (1) is subject to the penalty for a Class B
misdemeanor. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2465/2dn

RLR:.....

l/mk

(date)

✓
Jay,

This redraft provides that a person who attempts to commit a Class A misdemeanor theft, fraud, loan fraud, or concealment of collateral against a financial institution is subject to the penalty for a Class B misdemeanor. ✓ In general, the penalty for attempt to commit a felony is the next lower class felony, for example, attempt to commit a Class E felony is penalized as a Class F felony. ✓ Unless specified, there is no penalty for attempt to commit a misdemeanor. ✓

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2465/2dn
RLR:lmk:jf

January 23, 2006

Jay,

This redraft provides that a person who attempts to commit a Class A misdemeanor theft, fraud, loan fraud, or concealment of collateral against a financial institution is subject to the penalty for a Class B misdemeanor. In general, the penalty for attempt to commit a felony is the next lower class felony, for example, attempt to commit a Class E felony is penalized as a Class F felony. Unless specified, there is no penalty for attempt to commit a misdemeanor.

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LRB-4360

Call from Jason 11/24/06 (Hundertmark's office)

add credit unions to definition
of financial ~~institute~~ institution

Jason said Stepp's office wants
same change to LRB-2465





State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2465/2

RLR:lkjff

Wanted today by S

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2005 BILL

RMR

S-Note

Regen

1 AN ACT to amend 938.18 (1) (a) 1., 941.291 (1) (b), 946.82 (4), 949.03 (1) (b) and
2 969.08 (10) (b); and to create 218.05 (15), 895.81, 939.03 (1) (f) and (g), 939.32
3 (2m), 941.38 (1) (b) 21. and subchapter IV of chapter 943 [precedes 943.80] of
4 the statutes; relating to: offenses against financial institutions, community
5 currency exchanges, and providing penalties.

Analysis by the Legislative Reference Bureau

Crimes against financial institutions

The following are crimes under current law:

1. Theft: taking and carrying away, using, transferring, or concealing movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property. Theft ranges from a Class A misdemeanor for theft of property valued at \$2,500 or less to a Class G felony for theft of property valued at \$10,000 or more.

2. Theft by fraud: obtaining another's property by intentionally deceiving the person with a false representation. The penalties are the same as for theft.

3. Robbery: taking property from another person or in the presence of another person by use or threat of violence. Robbery is generally a Class E felony.

Under current law a person may be convicted of theft, fraud, or robbery of a financial institution.

This bill creates a new subchapter of property crimes against financial institutions. A financial institution is defined as a bank, a savings bank, a savings

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and loan association, ^{or} a trust company, ^{or a credit union} or 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.

The crimes created in the bill are:

1. Theft against a financial institution: knowingly using, transferring, concealing, or taking money, funds, or other property owned by or under the custody or control of a financial institution without authorization from the financial institution. Theft against a financial institution ranges from a Class A misdemeanor for theft of property valued at \$500 or less to a Class E felony for theft of property valued at \$100,000 or more.

2. Fraud against a financial institution: obtaining money or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises; or falsely representing that one is a financial institution to obtain money or other goods, or to obtain or record a person's personal identifying information. (Class A misdemeanor to Class E felony.)

3. Loan fraud: knowingly overvaluing or making a false statement concerning any land, security, or other property for the purpose of influencing a financial institution to take any action in connection with a loan or loan application. (Class A misdemeanor to Class E felony.)

4. Concealment of collateral: knowingly concealing, removing, disposing of, or converting to one's own use any property mortgaged to, pledged to, or held by a financial institution. (Class A misdemeanor to Class E felony.)

5. Bribery: conferring or offering to confer a benefit on an employee, agent, or fiduciary of a financial institution without the consent of the financial institution and with intent to influence the person's conduct in relation to the affairs of the institution. The bribery provision also prohibits an employee, agent, or fiduciary of a financial institution from agreeing to accept a benefit without the consent of the institution in return for taking actions with respect to the institution's affairs. (Class H felony.)

6. Extortion: threatening to injure an employee of a financial institution or to cause damage to the institution's property for the purpose of obtaining money or other property owned or under the custody or control of the financial institution. (Class H felony.)

7. Robbery of a financial institution: taking property that is owned by or under the custody or control of a financial institution from a person by use or threat of violence. (Class C felony.)

8. Mail fraud and wire fraud: using a wire communications system, the U.S. mail, or a commercial delivery service to further commission of any of the crimes listed above or any other felony against a financial institution; or using the U.S. mail or a commercial delivery service to distribute or conduct other activity related to counterfeit currency, obligations, or securities. The bill also provides that the state has jurisdiction to prosecute mail or wire fraud if mail or a wire transmission is sent from this state, received in this state, or, in the case of wire fraud, if it is reasonably foreseeable that the transmission will be accessed in this state. (Class H felony.)

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9. Organizer of financial crimes: committing three or more financial crimes within an 18-month period in concert with a person whom the actor supervises, organizes, finances, or manages. A financial crime is any crime against a financial institution created by this bill as well as any felony against a financial institution. (Class E felony.)

The bill also provides that if a person commits three or more financial crimes, as defined in item 9., against a financial institution in an 18-month period, the term of imprisonment for the third or subsequent offense may be increased by two years for a misdemeanor, four years for lesser felonies, and up to six years for more serious felonies.

The bill provides that a financial institution may bring a civil action against a person who commits a financial crime, as defined in item 9., to recover any compensation the financial institution paid to a customer as a result of the crime as well as any damages suffered by the financial institution as a result of the crime.

The penalties for the crimes mentioned above are as follows:

<i>Crime</i>	<i>Maximum Fine</i>	<i>Maximum Imprisonment</i> (For felonies, includes term of extended supervision)
Class A misdemeanor	\$10,000	Nine months
Class I felony	\$10,000	Three and one-half years
Class H felony	\$10,000	Six years
Class G felony	\$25,000	Ten years
Class E felony	\$50,000	Fifteen years

Check cashing businesses

Under current law, a person, other than a financial institution or credit union, that engages in the business of cashing checks and money orders must obtain a community currency exchange license and must abide by certain rules, such as a prohibition against acting as a depository for money. The bill provides a criminal penalty (a fine not to exceed \$2,000, imprisonment for not more than nine months, or both) for violating the licensing or other requirements for community currency exchanges.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

BILL**SECTION 1**

1 **SECTION 1.** 218.05 (15) of the statutes is created to read:

2 218.05 (15) A person who violates this section may be fined not more than
3 \$2,000 or imprisoned for not more than 9 months or both.

4 **SECTION 2.** 895.81 of the statutes is created to read:

5 **895.81 Indemnification of a financial institution.** A financial institution,
6 as defined in s. 943.80 (2), that compensates a customer for a pecuniary loss resulting
7 from a financial crime, as defined in s. 943.80 (1), or assumes the loss, may bring a
8 civil action against the person who committed the crime to recover the amount of the
9 loss, any other damages incurred by the financial institution as a result of the crime,
10 and the costs incurred to bring the action, including attorney's fees.

11 **SECTION 3.** 938.18 (1) (a) 1. of the statutes is amended to read:

12 938.18 (1) (a) 1. If the juvenile is alleged to have violated s. 940.03, 940.06,
13 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87, or 961.41 (1) on or
14 after the juvenile's 14th birthday.

15 **SECTION 4.** 939.03 (1) (f) and (g) of the statutes are created to read:

16 939.03 (1) (f) The person violates s. 943.89 and the matter or thing is deposited
17 for delivery within this state or is received or taken within this state.

18 (g) The person violates s. 943.90 and the transmission is from within this state,
19 the transmission is received within this state, or it is reasonably foreseeable that the
20 transmission will be accessed by a person or machine within this state.

21 **SECTION 5.** 939.32 (2m) of the statutes is created to read:

22 939.32 (2m) MISDEMEANOR CRIMES AGAINST FINANCIAL INSTITUTION. Whoever
23 attempts to commit a crime under s. 943.81, 943.82 (1), 943.83, or 943.84 that is a
24 Class A misdemeanor under s. 943.91 (1) is subject to the penalty for a Class B
25 misdemeanor.

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SECTION 6. 941.291 (1) (b) of the statutes is amended to read:

941.291 (1) (b) "Violent felony" means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

SECTION 7. 941.38 (1) (b) 21. of the statutes is created to read:

941.38 (1) (b) 21. A crime under s. 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, or 943.90.

SECTION 8. Subchapter IV of chapter 943 [precedes 943.80] of the statutes is created to read:

CHAPTER 943

SUBCHAPTER IV

CRIMES AGAINST

FINANCIAL INSTITUTIONS

943.80 Definitions. In this subchapter:

(1) "Financial crime" means a crime under ss. 943.81 to 943.90 or any other felony committed against a financial institution or an attempt or conspiracy to commit one of these crimes.

(2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c), a savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, or a trust

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or a credit union, as defined in s. 186.01(2),

1 company, whether chartered under the laws of this state, another state or territory,
2 or under the laws of the United States, or a company that controls, is controlled by,
3 or is under common control with a bank, a savings bank, a savings and loan
4 association, ~~or a trust company~~, *or a credit union*

↑ stays

5 **943.81 Theft from a financial institution.** Whoever knowingly uses,
6 transfers, conceals, or takes possession of money, funds, credits, securities, assets,
7 or property owned by or under the custody or control of a financial institution without
8 authorization from the financial institution and with intent to convert it to his or her
9 own use or to the use of any person other than the owner or financial institution may
10 be penalized as provided in s. 943.91.

11 **943.82 Fraud against a financial institution. (1)** Whoever obtains money,
12 funds, credits, assets, securities, or other property owned by or under the custody or
13 control of a financial institution by means of false pretenses, representations, or
14 promises, or by use of any fraudulent device, scheme, artifice, or monetary
15 instrument may be penalized as provided in s. 943.91.

16 **(2)** Whoever falsely represents that he or she is a financial institution or a
17 representative of a financial institution for the purpose of obtaining money, goods,
18 or services from any person or for the purpose of obtaining or recording a person's
19 personal identifying information, as defined in s. 943.201 (1) (b), is guilty of Class H
20 felony.

21 **943.83 Loan fraud.** Whoever with intent to defraud a financial institution
22 knowingly overvalues or makes a false statement concerning any land, security, or
23 other property for the purpose of influencing the financial institution to take or defer
24 any action in connection with a loan or loan application may be penalized as provided
25 in s. 943.91 according to the value of the loan.

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1 **943.84 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. 943.91.

5 **943.85 Bribery involving a financial institution. (1)** Whoever confers,
6 offers, or agrees to confer a benefit on an employee, agent, or fiduciary of a financial
7 institution without the consent of the financial institution and with intent to
8 influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of
9 the institution is guilty of a Class H felony.

10 **(2)** Any employee, agent, or fiduciary of a financial institution who without the
11 consent of the financial institution solicits, accepts, or agrees to accept any benefit
12 from another person pursuant to an agreement that the employee, agent, or fiduciary
13 will act in a certain manner in relation to the affairs of the financial institution is
14 guilty of a Class H felony.

15 **943.86 Extortion against a financial institution.** Whoever for the purpose
16 of obtaining money, funds, credits, securities, assets, or property owned by or under
17 the custody or control of a financial institution threatens to cause bodily harm to an
18 owner, employee, or agent of a financial institution or to cause damage to property
19 owned by or under the custody or control of the financial institution is guilty of a
20 Class H felony.

21 **943.87 Robbery of a financial institution.** Whoever by use of force or threat
22 to use imminent force takes from an individual or in the presence of an individual
23 money or property that is owned by or under the custody or control of a financial
24 institution is guilty of Class C felony.

BILL**SECTION 8**

1 **943.88 Organizer of financial crimes.** Whoever commits 3 or more financial
2 crimes within an 18-month period is guilty of a Class E felony if all of the following
3 conditions apply:

4 (1) Each of the crimes is committed in concert with a person whom the actor
5 supervises, organizes, finances, or manages. The person need not be the same for
6 each of the crimes.

7 (2) At least one of the crimes is committed on or after the effective date of this
8 subsection [revisor inserts date].

9 **943.89 Mail fraud.** Whoever does any of the following to further commission
10 of a financial crime or to sell, dispose of, loan, exchange, alter, give away, distribute,
11 supply, furnish, or procure for an unlawful purpose any counterfeit currency,
12 obligation, or security is guilty of a Class H felony:

13 (1) Deposits or causes any matter to be deposited in a United States post office
14 or authorized depository for United States mail.

15 (2) Deposits or causes to be deposited any matter or thing to be sent or delivered
16 by a commercial carrier.

17 (3) Takes or receives any matter or a thing sent or delivered by United States
18 mail or by a commercial carrier.

19 **943.90 Wire fraud against a financial institution.** Whoever transmits or
20 causes to be transmitted electrically, electromagnetically, or by light any signal,
21 writing, image, sound, or data for the purpose of committing a financial crime is
22 guilty of a Class H felony.

23 **943.91 Penalties.** Whoever violates s. 943.81, 943.82 (1), 943.83, or 943.84 is
24 guilty of the following:

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

3 (2) If the value of the money, funds, credits, securities, assets, property, or loan
4 does not exceed \$500, and the person has previously been convicted of an
5 misdemeanor or felony under s. 943.10, 943.12, 943.20 to 943.75, or 943.81 to 943.90,
6 a Class I felony.

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

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

11 (5) If the value of the money, funds, credits, securities, assets, property, or loan
12 exceeds \$100,000, a Class E felony.

13 **943.92 Increased penalty for multiple financial crimes.** If a person is
14 convicted of committing 3 or more financial crimes in an 18-month period, the term
15 of imprisonment for the 3rd or subsequent crime in the 18-month period may be
16 increased as follows:

17 (1) A maximum term of imprisonment of one year or less may be increased to
18 not more than 2 years.

19 (2) A maximum term of imprisonment of more than one year but not more than
20 10 years may be increased by not more than 2 years if the prior convictions were for
21 misdemeanors and by not more than 4 years if at least one of the prior convictions
22 was for a felony.

23 (3) A maximum term of imprisonment of more than 10 years may be increased
24 by not more than 2 years if the prior convictions were for misdemeanors and by not
25 more than 6 years if at least one of the prior convictions was for a felony.

BILL**SECTION 9**

1 **SECTION 9.** 946.82 (4) of the statutes is amended to read:

2 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
3 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
4 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1),
5 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
6 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
7 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
8 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g),
9 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3)
10 (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27,
11 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41
12 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 943.81, 943.82,
13 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e),
14 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10,
15 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65,
16 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

17 **SECTION 10.** 949.03 (1) (b) of the statutes is amended to read:

18 949.03 (1) (b) The commission or the attempt to commit any crime specified in
19 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
20 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
21 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
22 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025,
23 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

24 **SECTION 11.** 969.08 (10) (b) of the statutes is amended to read:

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

LRB-2465/3dn

RLR...kjf

Date

Jay:

This redraft adds credit union to the definition of financial institution.

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

LRB-2465/3dn
RLR:kjf:rs

January 24, 2006

Jay:

This redraft adds credit union to the definition of financial institution.

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Northrop, Lori

From: Risch, Jay
Sent: Wednesday, January 25, 2006 10:46 AM
To: LRB.Legal
Subject: Draft Review: LRB 05-2465/3 Topic: Crimes against financial institutions

Please Jacket LRB 05-2465/3 for the SENATE.