

2003 ASSEMBLY BILL 157

March 13, 2003 – Introduced by Representatives PETTIS, MUSSER, KRAWCZYK, SUDER, KERKMAN, OWENS, LADWIG, HAHN, HINES, ALBERS, AINSWORTH, FREESE, FRISKE, LOEFFELHOLZ, BIES, GUNDERSON, NASS, VRAKAS, OTT, MCCORMICK, J. FITZGERALD, TOWNSEND and STONE, cosponsored by Senators ZIEN, KEDZIE, STEPP, ROESSLER and A. LASEE. Referred to Committee on Criminal Justice.

1 **AN ACT to repeal** 946.05; **to amend** 895.75 (1) and 946.06 (3); and **to create**
2 947.07 of the statutes; **relating to:** crimes affecting the U.S. flag and providing
3 a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from intentionally and publicly mutilating, defiling, or casting contempt upon the flag, which is defined to include the U.S. flag, the U.S. shield, the U.S. coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of these things. However, this law was held to be unconstitutional by the Wisconsin Supreme Court in *State v. Janssen*, 219 Wis. 2d 362 (1998).

This bill prohibits a person from destroying, damaging, or mutilating a U.S. flag, or causing a U.S. flag to come into contact with urine, feces, or expectoration, with the intent to cause imminent violence or a breach of the peace in circumstances in which the actor knows that his or her conduct is likely to cause violence or a breach of the peace. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than nine months or both. The bill also repeals the law held unconstitutional in *State v. Janssen*.

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.

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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:

1 **SECTION 1.** 895.75 (1) of the statutes is amended to read:

2 895.75 (1) ~~Any If a person who suffers physical injury to his or her person or~~
3 emotional distress or damage to or loss of his or her property by reason of conduct
4 which that is prohibited under s. 943.012 and that causes damage to any property
5 specified in s. 943.012 (1) to (4) or which by reason of conduct that is grounds for a
6 penalty increase under s. 939.645 (1), the person has a civil cause of action against
7 the person who caused the physical injury, emotional distress, damage or loss.

8 **SECTION 2.** 946.05 of the statutes, as affected by 2001 Wisconsin Act 109, is
9 repealed.

10 **SECTION 3.** 946.06 (3) of the statutes is amended to read:

11 946.06 (3) In this section “flag” ~~has the meaning designated in s. 946.05~~ means
12 anything that is or purports to be the Stars and Stripes, the United States shield, the
13 United States coat of arms, the Wisconsin state flag, or a copy, picture, or
14 representation of any of them.

15 **SECTION 4.** 947.07 of the statutes is created to read:

16 **947.07 Causing violence or breach of the peace by damaging or**
17 **destroying a U.S. flag. (1)** In this section, “flag” means a flag of the United States
18 consisting of horizontal stripes, alternately colored red and white, and a union of any
19 number of white stars on a blue field.

20 **(2)** Whoever destroys, damages, or mutilates a flag, or causes a flag to come into
21 contact with urine, feces, or excretion, with the intent to cause imminent

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1 violence or a breach of the peace under circumstances in which the actor knows that
2 his or her conduct is likely to cause violence or a breach of the peace is guilty of a Class
3 A misdemeanor.

4 **SECTION 5. Initial applicability.**

5 (1) This act first applies to offenses occurring on the effective date of this
6 subsection.

7 (END)