

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:

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.

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