

## 2005 ASSEMBLY BILL 986

February 7, 2006 – Introduced by Representatives HUNDERTMARK, DAVIS, LAMB, NISCHKE, MONTGOMERY, MUSSER, OTT, PETTIS, HAHN, ALBERS, BIES, VOS, FREESE, GUNDERSON, MEYER, LEMAHIEU, KRAWCZYK, SUDER, KAUFERT, VAN ROY, HINES, PETROWSKI, MURSAU, J. FITZGERALD and KREIBICH, cosponsored by Senators STEPP, KANAVAS, DARLING, ZIEN, GROTHMAN and LEIBHAM. Referred to Committee on Financial Institutions.

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.

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### *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

**ASSEMBLY BILL 986**

and loan association, 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, a trust company, or a credit union.

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.)

**ASSEMBLY BILL 986**

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.

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

**ASSEMBLY BILL 986**

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.



**ASSEMBLY BILL 986**

1 company, or a credit union, as defined in s. 186.01 (2), whether chartered under the  
2 laws of this state, another state or territory, or under the laws of the United States,  
3 or a company that controls, is controlled by, or is under common control with a bank,  
4 a savings bank, a savings and loan association, a trust company, or a credit union.

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.

**ASSEMBLY BILL 986**

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.

**ASSEMBLY BILL 986**

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:



**ASSEMBLY BILL 986**

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.

**ASSEMBLY BILL 986**

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:

