

2005 DRAFTING REQUEST

Bill

Received: **01/09/2006** Received By: **rryan**
Wanted: **As time permits** Identical to LRB:
For: **Jean Hundertmark (608) 266-3794** By/Representing: **Jason**
This file may be shown to any legislator: **NO** Drafter: **rryan**
May Contact: Addl. Drafters:
Subject: **Criminal Law - miscellaneous** Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Hundertmark@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Crimes against financial institutions

Instructions:

Same as LRB-2465

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 01/17/2006	lkunkel 01/17/2006		_____			S&L Crime
/1			pgreensl 01/17/2006	_____	sbasford 01/18/2006		S&L Crime
/2	rryan 01/23/2006	lkunkel 01/23/2006	jfrantze 01/23/2006	_____	sbasford 01/23/2006		S&L Crime
/3	rryan	kfollett	jfrantze	_____	lnorthro	lemery	

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	01/24/2006	01/24/2006	01/24/2006	_____	01/24/2006	02/03/2006	

FE Sent For:

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/2	rryan 01/23/2006	lkunkel 01/23/2006	jfrantze 01/23/2006	_____	sbasford 01/23/2006		

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/?	rryan	/l/mk 1/17	X 1/17 PG	4 1/17 SELF			

FE Sent For:

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In 1/17/06

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2005 BILL

Reisen ✓

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.)

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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 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:

<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.** 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,

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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.

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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

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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),

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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)