

AS:ty

11/04/2010

1       **AN ACT** *to repeal* 49.141 (7) (b), 49.141 (10) (b), 49.49 (3m) (b), 49.688 (9) (b) and  
 2           (c) and 49.795 (8) (a) (intro.); *to renumber* 49.795 (1), 49.795 (2), (2m), (3), (4), (5),  
 3           (6), and (7) and 49.795 (8) (d) 2.; *to renumber and amend* 49.141 (7) (a), 49.141 (9)  
 4           (a), 49.141 (9) (b), 49.141 (10) (a), 49.49 (1), 49.49 (2) (a), 49.49 (2) (b), 49.49 (3),  
 5           49.49 (3m) (a), 49.49 (4), 49.795 (8) (a) 1., 49.795 (8) (a) 2., 49.795 (8) (b) (intro.)  
 6           1. and 2., 49.795 (8) (c), 49.795 (8) (d) 1., 49.795 (8) (d) 1m., 49.795 (8) (e) and (f)  
 7           and 49.95; *to amend* 49.141 (7) (c) (intro.), 49.141 (8) and 49.49 (1) (c); and *to*  
 8           *create* 946.90 (title) and (1), 946.90 (2), 946.91 (title) and (1) and 946.92 (3) (a)  
 9           (intro.) of the statutes; **relating to:** criminal penalties for public assistance violations.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council’s Special Committee on Public Assistance Program Integrity.

The draft moves several provisions of ch. 49 that are offenses with criminal penalties to ch. 946 of the criminal code, relating to crimes against government and its administration.

The draft creates 4 new criminal offenses in ch. 946: Wisconsin works fraud, medical assistance fraud, food stamp fraud, and public assistance fraud.

The offense of Wisconsin works fraud includes the following provisions of current law:

- Prohibited conduct relating to the Wisconsin works program under s. 49.141 (6) and the associated criminal penalties under s. 49.141 (7). Section 49.141 (6) remains in ch. 49 under the draft, but the same conduct is prohibited under ch. 946.
- Violations relating to kickbacks, bribes, and rebates and the associated criminal penalties under s. 49.141 (9).

- Violations relating to imposing prohibited charges on Wisconsin works participants and the associated criminal penalties under s. 49.141 (10).

The offense of medical assistance fraud includes the following provisions of current law:

- Prohibited conduct relating to the medical assistance program under s. 49.49 (1) and the associated criminal penalties.
- Violations relating to kickbacks, bribes, and rebates and the associated criminal penalties under s. 49.49 (2).
- Violations relating to fraudulent certification of institutions or facilities and the associated criminal penalties under s. 49.49 (3).
- Violations relating to imposing prohibited charges on medical assistance recipients and the associated criminal penalties under s. 49.49 (3m) and (4).
- Prohibited conduct relating to the prescription drug assistance to elderly persons program under s. 49.688 (9).

The offense of food stamp fraud includes the current provisions of s. 49.795, food stamp fraud.

The offense of public assistance fraud contains the general violations and penalties relating to public assistance contained in the current provisions of s. 49.95.

1           **SECTION 1.** 49.141 (7) (a) of the statutes is renumbered 946.90 (3) and amended to read:  
 2           946.90 (3) ~~A person who is convicted of violating sub. (6) in connection with the~~  
 3           Whoever violates sub. (2) by furnishing by that person of items or services for which payment  
 4           is or may be made under Wisconsin works is guilty of a Class H felony.

**COMMENT:** Should this offense apply if payment “may be made”?

5           **SECTION 2.** 49.141 (7) (b) of the statutes is repealed.

6           **SECTION 3.** 49.141 (7) (c) (intro.) of the statutes is amended to read:

7           49.141 (7) (c) (intro.) Except as provided in par. (d), in addition to the penalties  
 8           applicable under ~~par. (a) or (b)~~ s. 946.90 (2), a person shall be suspended from participating  
 9           in Wisconsin works for a period of 10 years, beginning on the date of conviction, if the person  
 10          is convicted in a federal or state court for any of the following:

1           **SECTION 4.** 49.141 (8) of the statutes is amended to read:

2           49.141 (8) DAMAGES. If a person is convicted under ~~sub. (6)~~ s. 946.90 (2), the state has  
3 a cause of action for relief against the person in an amount equal to 3 times the amount of actual  
4 damages sustained as a result of any excess payments made in connection with the offense for  
5 which the conviction was obtained. Proof by the state of a conviction under sub. (6) is  
6 conclusive proof in a civil action of the state's right to damages and the only issue in  
7 controversy shall be the amount, if any, of the actual damages sustained. Actual damages  
8 consist of the total amount of excess payments, any part of which is paid with state funds. In  
9 a civil action under this subsection, the state may elect to file a motion in expedition of the  
10 action. Upon receipt of the motion, the presiding judge shall expedite the action.

**COMMENT:** Is the language in the amendment to replay "any  
renumeration in cash or in-kind" an appropriate modification?

11           **SECTION 5.** 49.141 (9) (a) of the statutes is renumbered 946.90 (4) and amended to read:

12           946.90 (4) Whoever solicits or receives ~~any remuneration in cash or in-kind~~ money,  
13 goods, services, or any other thing of value, in return for referring an individual to a person  
14 for the furnishing or arranging for the furnishing of any item or service for which payment may  
15 be made in whole or in part under Wisconsin works, or in return for purchasing, leasing,  
16 ordering, or arranging for or recommending purchasing, leasing, or ordering any good,  
17 facility, service, or item for which payment may be made in whole or in part under Wisconsin  
18 works, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified  
19 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

20           **SECTION 6.** 49.141 (9) (b) of the statutes is renumbered 946.90 (5) and amended to read:

21           946.90 (5) Whoever offers or pays ~~any remuneration in cash or in-kind~~ money, goods,  
22 services, or any other thing of value to any person to induce the person to refer an individual

1 to a person for the furnishing or arranging for the furnishing of any item or service for which  
2 payment may be made in whole or in part under Wisconsin works, or to purchase, lease, order,  
3 or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or  
4 item for which payment may be made in whole or in part under any provision of Wisconsin  
5 works, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified  
6 in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

7 **SECTION 7.** 49.141 (10) (a) of the statutes is renumbered 946.90 (6) and amended to  
8 read:

9 946.90 (6) A provider ~~may not~~ who knowingly impose imposes upon a recipient  
10 Wisconsin works participant charges in addition to payments received for services under  
11 Wisconsin works or knowingly ~~impose~~ imposes direct charges upon a recipient in lieu of  
12 obtaining payment under Wisconsin works ~~unless is guilty of a Class H felony, except that,~~  
13 notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not  
14 more than \$25,000. This subsection does not apply if benefits or services are not provided  
15 under Wisconsin works and the recipient Wisconsin works participant is advised of this fact  
16 prior to receiving the service.

17 **SECTION 8.** 49.141 (10) (b) of the statutes is repealed.

**NOTE:** SECTIONS 1 to 7 move criminal penalties relating to Wisconsin works fraud to s. 946.90. Chapter 946 contains crimes against government and its administration. Also, see SECTIONS 32 and 33.

18 **SECTION 9.** 49.49 (1) of the statutes is renumbered 946.91 (2) and amended to read:

19 946.91 (2) **FRAUD.** (a) ~~Prohibited conduct.~~ No person, in connection with a medical  
20 assistance program, may: Whoever does any of the following is guilty of a Class H felony,  
21 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may  
22 be fined not more than \$25,000:

1           1. ~~(a)~~ Knowingly and willfully ~~make~~ makes or ~~cause~~ causes to be made any false  
2 statement or representation of a material fact in any application for any medical assistance  
3 benefit or payment.

4           2. ~~(b)~~ Knowingly and willfully ~~make~~ makes or ~~cause~~ causes to be made any false  
5 statement or representation of a material fact for use in determining rights to ~~such~~ any medical  
6 assistance benefit or payment.

**COMMENT:** Should “rights” be replaced with “eligibility”? Also, this type of offense is a Class A misdemeanor under current law if the conduct relates to the Wisconsin works program. In addition, s. 49.49 (4m) contains a forfeiture offense for prohibited conduct in connection with the medical assistance program that is the same as the conduct described in s. 49.49 (1) (a) to (c) if the conduct is done “knowingly” instead of “knowingly and willfully”. Should these offenses have consistent penalties?

7           3. ~~(c)~~ Having knowledge of the occurrence of any event affecting the initial or  
8 continued right to any ~~such~~ medical assistance benefit or payment or the initial or continued  
9 right to any such benefit or payment of any other individual in whose behalf he or she has  
10 applied for or is receiving such benefit or payment, ~~conceal~~ conceals or ~~fail~~ fails to disclose  
11 such event with an intent to fraudulently ~~to~~ secure such benefit or payment either in a greater  
12 amount or quantity than is due or when no such benefit or payment is authorized.

**COMMENT:** Should “right” be replaced with “eligibility”?

13           4. ~~(d)~~ Having ~~made application~~ applied to receive any ~~such~~ medical assistance benefit  
14 or payment for the use and benefit of another and having received it, knowingly and willfully  
15 ~~convert such~~ converts the benefit or payment or any part thereof to a use ~~other than for the use~~  
16 ~~and that is not for the~~ benefit of such other person.

17           **SECTION 10.** 49.49 (1) (c) of the statutes is amended to read:

1           49.49 (1) (c) *Damages*. If any person is convicted under ~~this subsection~~ s. 946.91 (2),  
2 the state shall have a cause of action for relief against such person in an amount 3 times the  
3 amount of actual damages sustained as a result of any excess payments made in connection  
4 with the offense for which the conviction was obtained. Proof by the state of a conviction  
5 under ~~this section~~ s. 946.91 (2) in a civil action shall be conclusive regarding the state's right  
6 to damages and the only issue in controversy shall be the amount, if any, of the actual damages  
7 sustained. Actual damages shall consist of the total amount of excess payments, any part of  
8 which is paid by state funds. In any such civil action the state may elect to file a motion in  
9 expedition of the action. Upon receipt of the motion, the presiding judge shall expedite the  
10 action.

11           **SECTION 11.** 49.49 (2) (a) of the statutes is renumbered 946.91 (3) (a) and amended to  
12 read:

13           946.91 (3) (a) ~~*Solicitation or receipt of remuneration.*~~ Any person who solicits or  
14 receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly,  
15 overtly or covertly, in cash or in kind, money, goods, services, or any other thing of value in  
16 return for referring an individual to a person for the furnishing or arranging for the furnishing  
17 of any item or service for which payment may be made in whole or in part under a medical  
18 assistance program, or in return for purchasing, leasing, ordering, or arranging for or  
19 recommending purchasing, leasing, or ordering any good, facility, service, or item for which  
20 payment may be made in whole or in part under a medical assistance program, is guilty of a  
21 Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h),  
22 the person may be fined not more than \$25,000.

23           **SECTION 12.** 49.49 (2) (b) of the statutes is renumbered 946.91 (3) (b) and amended to  
24 read:

1           946.91 (3) (b) ~~Offer or payment of remuneration.~~ Whoever offers or pays any  
2 remuneration including any kickback, bribe, or rebate directly or indirectly, overtly or  
3 covertly, in cash or in kind money, goods, services, or any other thing of value to any person  
4 to induce such person to refer an individual to a person for the furnishing or arranging for the  
5 furnishing of any item or service for which payment may be made in whole or in part under  
6 a medical assistance program, or to purchase, lease, order, or arrange for or recommend  
7 purchasing, leasing, or ordering any good, facility, service or item for which payment may be  
8 made in whole or in part under a medical assistance program, is guilty of a Class H felony,  
9 except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may  
10 be fined not more than \$25,000.

11           **SECTION 13.** 49.49 (3) of the statutes is renumbered 946.91 (4) and amended to read:

12           946.91 (4) ~~FRAUDULENT CERTIFICATION OF FACILITIES.~~ No A person may who knowingly  
13 and willfully ~~make~~ makes or ~~cause~~ causes to be made, or ~~induce~~ induces or ~~seek~~ seeks to  
14 induce the making of, any false statement or representation of a material fact with respect to  
15 the conditions or operation of any institution or facility in order that such institution or facility  
16 may qualify either upon initial certification or upon recertification as a hospital, skilled  
17 nursing facility, intermediate care facility, or home health agency. ~~A person who violates this~~  
18 ~~subsection~~ is guilty of a Class H felony, except that, notwithstanding the maximum fine  
19 specified in s. 939.50 (3) (h), the person may be fined not more than \$25,000.

20           **SECTION 14.** 49.49 (3m) (a) of the statutes is renumbered 946.91 (5) and amended to  
21 read:

22           946.91 (5) ~~PROHIBITED PROVIDER CHARGES.~~ ~~(a)~~ No provider may knowingly impose  
23 upon a medical assistance recipient charges in addition to payments received for services  
24 under ss. 49.45 to 49.471 or knowingly impose direct charges upon a recipient in lieu of

1 obtaining payment under ss. 49.45 to 49.471 ~~except under the following conditions: is guilty~~  
2 ~~of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3)~~  
3 ~~(h), the person may be fined not more than \$25,000. This subsection does not apply to the~~  
4 ~~following circumstances:~~

5 1. ~~(a)~~ Benefits or services are not provided under s. 49.46 (2) or 49.471 (11) and the  
6 ~~medical assistance~~ recipient is advised of this fact prior to receiving the service.

7 2. ~~(b)~~ If an applicant for medical assistance is determined to be eligible retroactively  
8 under s. 49.46 (1) (b), 49.47 (4) (d), or 49.471 ~~and~~; a provider bills the applicant directly for  
9 services and benefits rendered during the retroactive period, ~~the provider shall, upon~~  
10 ~~notification of the applicant's retroactive eligibility, submit claims for payment under s. 49.45~~  
11 ~~for covered services or benefits rendered to the recipient during the retroactive period. Upon~~  
12 ~~; and upon~~ receipt of payment under s. 49.45, the provider shall ~~reimburse~~ reimburses the  
13 recipient or other person who has made prior payment to the provider for services provided  
14 to the recipient during the retroactive eligibility period, by the amount of the prior payment  
15 made.

**COMMENT:** Should a provision similar to this be included in ch. 49?

16 3. ~~(c)~~ Benefits or services for which recipient copayment, coinsurance, or deductible  
17 is required under s. 49.45 (18), not to exceed maximum amounts allowable under 42 CFR  
18 447.53 to 447.58, or for which recipient copayment or coinsurance is required under s. 49.471  
19 (11).

20 **SECTION 15.** 49.49 (3m) (b) of the statutes is repealed.

21 **SECTION 16.** 49.49 (4) of the statutes is renumbered 946.91 (6) and amended to read:

22 946.91 (6) ~~PROHIBITED FACILITY CHARGES.~~ (a) ~~No~~ A person who, in connection with the  
23 medical assistance program when the cost of the services provided to the patient is paid for

1 in whole or in part by the state, ~~may knowingly and willfully charge, solicit, accept or receive~~  
2 charges, solicit, accepts, or receives, in addition to any amount otherwise required to be paid  
3 under a medical assistance program, any gift, money, donation or other consideration, other  
4 than a charitable, religious or philanthropic contribution from an organization or from a person  
5 unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing  
6 facility or intermediate care facility, or as a requirement for the patient's continued stay in such  
7 a facility.

8 ~~(b) A person who violates this subsection~~ is guilty of a Class H felony, except that,  
9 notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not  
10 more than \$25,000.

**NOTE:** SECTIONS 8 to 15 move criminal penalties relating to medical assistance to s. 946.91. Also, see SECTION 34.

11 **SECTION 17.** 49.688 (9) (b) and (c) of the statutes are repealed.

**NOTE:** Repeals criminal penalties for the senior care program. These offenses are treated as medical assistance fraud under s. 946.92 based on the definition of "medical assistance" in SEC. \_\_\_.

12 **SECTION 18.** 49.795 (1) of the statutes is renumbered 946.92 (1).

13 **SECTION 19.** 49.795 (2), (2m), (3), (4), (5), (6), and (7) of the statutes are renumbered  
14 946.92 (2) (a), (b), (c), (d), (e), (f), and (g).

15 **SECTION 20.** 49.795 (8) (a) (intro.) of the statutes is repealed.

16 **SECTION 21.** 49.795 (8) (a) 1. of the statutes is renumbered 946.92 (3) (a) 1. and  
17 amended to read:

18 946.92 (3) (a) 1. If the value of the food coupons does not exceed \$100, a the person  
19 ~~who violates this section~~ may be fined not more than \$1,000 or imprisoned not more than one  
20 year in the county jail, or both.

1           **SECTION 22.** 49.795 (8) (a) 2. of the statutes is renumbered 946.92 (3) (a) 2. and  
2 amended to read:

3           946.92 (3) (a) 2. If the value of the food coupons exceeds \$100, but is less than \$5,000,  
4 a ~~the person who violates this section~~ is guilty of a Class I felony.

5           **SECTION 23.** 49.795 (8) (b) (intro.) 1. and 2. of the statutes are renumbered 946.92 (3)  
6 (b) (intro.), 1. and 2. and amended to read:

7           946.92 (3) (b) (intro.) For a 2nd or subsequent offense under this section sub. (2), the  
8 penalties are as follows:

9           1. If the value of the food coupons does not exceed \$100, a ~~the person who violates this~~  
10 ~~section~~ may be fined not more than \$1,000 or imprisoned not more than one year in the county  
11 jail or both.

12           2. If the value of the food coupons exceeds \$100, but is less than \$5,000, a ~~the person~~  
13 ~~who violates this section~~ is guilty of a Class H felony.

14           **SECTION 24.** 49.795 (8) (c) of the statutes is renumbered 946.92 (3) (c) and amended  
15 to read:

16           946.92 (3) (c) For any offense under this section, if the value of the food coupons is  
17 \$5,000 or more, a ~~the person who violates this section~~ is guilty of a Class G felony.

18           **SECTION 25.** 49.795 (8) (d) 1. of the statutes is renumbered 946.92 (3) (d) 1. and  
19 amended to read:

20           946.92 (3) (d) 1. (intro.) In addition to the penalties applicable under par. (a), ~~(b)~~ or (e)  
21 ~~(b)~~, the court shall suspend a person who violates this section from participation in the food  
22 stamp program as follows:

23           a. For a first offense under this section, not less than one year. ~~The court may extend~~  
24 ~~the suspension by and~~ not more than ~~18 months~~ 2 1/2 years.

1           b. For a 2nd offense under this section, not less than 2 years.~~The court may extend the~~  
2 ~~suspension by and~~ not more than ~~18 months~~ 3 1/2 years.

3           **SECTION 26.** 49.795 (8) (d) 1m. of the statutes is renumbered 946.92 (3) (c) 1m. and  
4 amended to read:

5           1m. In addition to the penalties applicable under par. (a),~~(b)~~ or ~~(e)~~ (b), a court shall  
6 permanently suspend from the food stamp program a person who has been convicted of an  
7 offense under 7 USC 2024 (b) or (c) involving an item covered by 7 USC 2024 (b) or (c) having  
8 a value of \$500 or more.

9           **SECTION 27.** 49.795 (8) (d) 2. of the statutes is renumbered 49.795 (9) and amended to  
10 read:

11           **(9)** ~~The~~ A person may apply to the county department under s. 46.215, 46.22 or 46.23  
12 or the federally recognized American Indian tribal governing body or, if the person is a  
13 supplier, to the federal department of agriculture for reinstatement of benefits following ~~the~~  
14 a period of suspension imposed under s. 946.92, if the suspension is not permanent.

15           **SECTION 28.** 49.795 (8) (e) and (f) of the statutes are renumbered 946.92 (3) (d) and (e)  
16 and amended to read:

17           946.92 **(3)** (d) 1. If a court finds that a person ~~traded~~ violated sub. (2) by trading a  
18 controlled substance, as defined in s. 961.01 (4), for food coupons, the court shall suspend the  
19 person from participation in the food stamp program as follows:

20           a. Upon the first such finding, for 2 years.

21           b. Upon the 2nd such finding, permanently.

22           2. If a court finds that a person ~~traded~~ violated sub. (2) by trading firearms, ammunition  
23 or explosives for food coupons, the court shall suspend the person permanently from  
24 participation in the food stamp program.

1 (e) Notwithstanding par. ~~(d)~~ (c), in addition to the penalties applicable under par. (a),  
2 ~~(b)~~ or ~~(e)~~ (b), the court shall suspend from the food stamp program for a period of 10 years  
3 a person who violates sub. (2) by fraudulently ~~misstates~~ misstating or ~~misrepresents~~  
4 misrepresenting his or her identity or place of residence for the purpose of receiving multiple  
5 benefits simultaneously under the food stamp program.

**NOTE:** SECTIONS 17 to 30 move criminal penalties relating to food share to s. 946.92. Also, see SECTIONS 35 and 36.

**COMMENT:** This draft does not update the terminology relating to the federal supplemental nutrition assistance program.

6 **SECTION 29.** 49.95 of the statutes is renumbered 946.93 and 946.93 (title) is amended  
7 to read:

8 **946.93 Penalties; evidence Public assistance fraud.**

**NOTE:** This SECTION moves the general public assistance violations and penalties to s. 946.43.

**COMMENT:** Current law contains penalties applicable to specific public assistance programs. Should all of these general penalties be kept in current law? Should a penalty apply if a penalty specific to a program is available? Does the language in this section need to be updated?

9 **SECTION 30.** 946.90 (title) and (1) of the statutes are created to read:

10 **946.90 (title) Wisconsin works fraud. (1)** In this section:

11 (a) “Provider” means a person that contracts with a Wisconsin works agency, as defined  
12 in s. 49.001 (a), to provide services to Wisconsin works participants.

13 (b) “Wisconsin works” means the assistance program for families with dependent  
14 children, administered under ss. 49.141 to 49.161.

15 **SECTION 31.** 946.90 (2) of the statutes is created to read:

16 **946.90 (2)** A person who does any of the following is guilty of a Class A misdemeanor:

1 (a) Knowingly and willfully makes or causes to be made any false statement or  
2 representation of a material fact in any application for any Wisconsin works benefit or  
3 payment.

4 (b) Having knowledge of the occurrence of any event affecting the initial or continued  
5 eligibility for a Wisconsin works benefit or payment under Wisconsin works, conceals or fails  
6 to disclose that event with an intent to fraudulently secure a Wisconsin works benefit or  
7 payment within a greater amount or quantity that is due or when no such benefit or payment  
8 is authorized.

9 **SECTION 32.** 946.91 (title) and (1) of the statutes are created to read:

10 **946.91 Medical Assistance Fraud. (1)** In this section:

11 (a) "Facility" means a nursing home or a community-based residential facility that is  
12 licensed under s. 50.03 and that is certified by the department of health services as a provider  
13 of medical assistance.

14 (b) "Medical assistance" means aid provided under subch. IV of ch. 49, except ss.  
15 49.468 and 47.471, and aid provided under s. 49.688.

16 (c) "Provider" means a person, corporation, limited liability company, partnership,  
17 incorporated business, or professional association, and any agent or employee thereof who  
18 provides medical assistance.

**COMMENT:** Please review the definitions. Do they give clear enough  
description for prosecutors? Are additional definitions needed?

19 **SECTION 33.** 946.92 (3) (a) (intro.) of the statutes is created to read:

20 946.92 (3) (a) Whoever violates sub. (2) is subject to the following penalties:

21 (END)