

1497B FINANCIAL TRANSACTION CARD FACTORING — § 943.41(6m)**Statutory Definition of the Crime**

Section 943.41(6m) of the Criminal Code of Wisconsin is violated by a person who is authorized to furnish goods, services, or anything else of value¹ upon presentation of a financial transaction card and who deposits, assigns, endorses, or presents for payment a financial transaction card transaction record if the person did not furnish or agree to furnish the goods, services, or anything else of value represented to be furnished by the transaction record.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a person authorized to furnish goods, services, or anything else of value upon presentation of a financial transaction card.

A "financial transaction card" is issued by a business organization or financial institution for the use of the cardholder in obtaining anything on credit.²

2. The defendant (deposited) (assigned) (endorsed) (presented for payment) a record of the use of a financial transaction card.³

This requires that the defendant presented the record for payment to an issuer or to any other person authorized to acquire transaction records for presentation to an issuer.

"Issuer" means the business organization or financial institution which issues a financial transaction card (or its duly authorized agent).⁴

3. The defendant did not furnish or agree to furnish the goods, services, or anything else of value described by the transaction record.⁵

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1497B was originally published as JI 1497.1 in 1994. This revision was approved by the Committee in May 2002; it renumbered the instruction, adopted a new format, and made nonsubstantive changes in the text.

Section 943.41(6m), which defines the offense of "credit card factoring" is very difficult to understand. The Committee's understanding was aided by the following example:

A legitimate merchant has an account with a credit card company. A person without his own account wants to accept credit card charges for sales of his merchandise.

Somehow, the person gets credit card charge slips and uses them for his sales. He then sells the slips to the merchant at a discount, say 90%. The merchant then forwards those slips for payment along with his own and receives say, 95% on the dollar from the regular issuer. He thus makes a 5% commission on the factoring.

This merchant has violated the statute because:

- 1) he is authorized to accept credit cards;

- 2) he presented a credit card charge slip for payment;
- 3) he did not furnish the goods or services represented on the slip.

Note that sub. (6m)(b) provides several exceptions to the applicability of the prohibition on factoring, excluding certain franchisors, authorized general merchandise retailers, and issuers or organizations of issuers.

The instruction makes some substitutions for the statutory language in an attempt to simplify the explanation of the offense. Those changes are identified in the footnotes below.

This offense is a Class E felony regardless of the value involved.

1. The statute includes "money" in the list of that which might be furnished. The Committee decided not to include "money" in the instruction because an example of a factoring offense involving money could not be imagined. Promising to provide money and then failing to do so would be a different offense; see, for example, the offense defined in sub. (6)(b) of § 943.41.
2. This definition is adapted from the one provided in § 943.41(1)(em).
3. "A record of the use of a financial transaction card" is substituted for the statute's "financial transaction card transaction record."
4. This is the definition provided in § 943.41(1)(f).
5. "Described by the transaction record" is substituted for the statute's "represented to be furnished by the transaction record."