

1512 FRAUD AGAINST A FINANCIAL INSTITUTION — § 943.82(1)**Statutory Definition of the Crime**

Fraud against a financial institution, as defined in § 943.82(1) of the Criminal Code of Wisconsin, is committed by one who obtains money, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises, or by use of any fraudulent device, scheme, artifice, or monetary instrument.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant obtained (money) (funds) (credits) (assets) (securities) (property) owned by or under the custody or control of a financial institution.¹

"Financial institution" means a (bank) (savings bank) (savings and loan association) (trust company) (credit union) (mortgage banker) (mortgage broker)² chartered under the laws of this state, another state or territory, or under the laws of the United States.³

2. The defendant obtained (specify what was obtained)⁴ [by means of false (pretenses) (representations) (promises)] [by use of any fraudulent (device) (scheme) (artifice) (monetary instrument)].⁵

A person obtains (money) (specify what was obtained)⁶ [by means of false (pretenses) (representations) (promises)] [by use of any fraudulent (device) (scheme) (artifice) (monetary instrument)] when [they are made] [it is used] with knowledge that [they are] [it is] false and with the intent to obtain money.⁷

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 1512 was approved by the Committee in October 2008.

This instruction is drafted for violations of § 943.82(1), which is part of Subchapter IV, Chapter 943, created by 2005 Wisconsin Act 212. Effective date: April 11, 2006.

Penalties for violations of § 943.82(1) are provided in § 943.91. Note that the penalties are higher than for similar violations of § 943.2)(1)(d), the general theft by fraud statute.

1. The options in parentheses are those set forth in the offense definition. Choose the option that matches the evidence in the case.

2. The options in parentheses are the most common of the alternatives included in the definition of "financial institution" provided in § 943.80(2). The definition also includes "a company that controls, is controlled by, or is under common control" of the specified institutions. The definition includes cross-references to other definitions for some of the specified institutions:

- bank – §214.01(1)(c)
- savings bank – §214.01(1)(t)

- credit union – §186.01(2)
- mortgage banker – §224.71(3)(a)
- mortgage broker – §224.71(4)(a)

3. Proof of chartered status was an issue in State v. Eady, 2016 WI App 12, 366 Wis.2d 711, 875 N.W.2d 139, which dealt with a violation of § 943.87. In Eady, the court of appeals apparently agreed with the defendant's contention that "chartered" status was an element of the crime, but found that it was established by circumstantial evidence.

4. Use the term selected for the first element.

5. Choose one of the two bracketed alternatives and choose one of the terms in parentheses from the bracket selected.

6. Use the term selected for the first element.

7. The Committee added this statement even though the statute does not specifically provide for it. Section 943.82(1) does not use the word "intentionally," or other "intent terms," as the regular theft by fraud statute does. Compare § 943.20(1)(d): "Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made."

Section 939.23(1) provides: "When criminal intent is an element of a crime in chs. 939 to 951, such intent is indicated by the term 'intentionally', the phrase 'with intent to', the phrase 'with intent that', or some form of the verbs 'know' or 'believe'." The Committee generally applies the converse of this rule. That is, when one of the "intent terms" is not used, the statute does not require criminal intent as an element of the crime. However, that interpretation may lead to harsh results under § 943.82(1) in that inadvertent minor errors in, for example, a loan application, could be the basis for criminal liability.

In the Committee's judgment, the added statement assures that the "false representation" alternative is treated consistently with the fair implication of the other alternatives in the statute. There are two categories of conduct prohibited by § 943.82(1):

- obtaining funds, etc., "by means of false pretenses, representations, or promises. . ." "Pretense" is defined as "a false appearance or action intended to deceive." American Heritage Dictionary of the English Language, 3rd Ed. (1992). A "false promise" strongly implies a promise made with an intent to deceive. To be consistent, the "false representation" should also be construed to include knowledge that the representation was false and an intent to use it to obtain funds.
- obtaining funds, etc., "by use of any fraudulent device, scheme, artifice, or monetary instrument . . ." Preceding these alternatives with "fraudulent" indicates an intentional act done with intent to obtain funds.

There is a basis in the text of the statute for adding a mental element in that it applies to "one who obtains funds . . . **by means of** false . . . representations . . ." [Emphasis added.] This suggests a connection between the making of a false representation and obtaining the funds. In a roughly similar

situation, appellate courts have required a connection [a "nexus"] between the possession of a dangerous weapon and the underlying crime for purposes of the dangerous weapon penalty enhancer under § 939.63. See State v. Peete, 185 Wis.2d 4, 517 N.W.2d 149 (1994).