

Ala. Code 1975, § 13A-9-48

Fraud in Insolvency

The defendant is charged with fraud in insolvency.

A person commits the crime of fraud in insolvency if, with the intent to defraud a creditor and with knowledge or reason to believe either that proceedings have been or about to be instituted for the appointment of a receiver or that a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he/she: (1) conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate; (2) presents to any creditor or to the receiver any writing or record relating to the debtor's estate, not otherwise within the coverage of Sections 13A-10-101, 13A-10-102 or 13A-10-109, knowing or having reason to believe that it contains a false material statement; or (3) misrepresents or refuses to disclose to the receiver, under circumstances not amounting to a violation of Section 13A-10-4, the existence, amount or location of any part of or an interest in debtor's estate, or any other information that he/she is legally required to furnish to the administrator.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant **[Read as appropriate]**:
 - (A) Conveyed, transferred, removed, concealed, destroyed, encumbered or otherwise disposed of any part of or any interest in the debtor's estate, **[describe the part or interest]**;
 - (B) Presented to any creditor or to the receiver any writing or record relating to the debtor's estate, **[describe the writing or record]**, not otherwise within the coverage of Sections 13A-10-101, 13A-10-102 or 13A-10-109, knowing or having reason to believe that it contains a false material statement; **(OR)**
 - (C) Misrepresented or refused to disclose to the receiver, under circumstances not amounting to a violation of Section 13A-10-4, the existence, amount or location of any part of or an interest in debtor's estate, or any other information that he/she was legally required to furnish to the administrator, **[describe the misrepresentation or refusal]**;
- (2) The Defendant did so with the intent to defraud a creditor; **(AND)**
- (3) The Defendant did so with knowledge or reason to believe either that proceedings had been or were about to be instituted for the appointment of

a receiver or that a composition agreement or other arrangement for the benefit of creditors had been or was about to be made.

Receiver means an assignee or trustee for the benefit of creditors, a conservator, a liquidator or any other person legally entitled to administer property for the benefit of creditors. [13A-9-48(b)]

A person acts *intentionally* with respect to a result or to conduct when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of fraud in insolvency, then you shall find the defendant guilty of fraud in insolvency.

If you find that the State has failed to prove any one or more of the elements of fraud in insolvency, then you cannot find the defendant guilty of fraud in insolvency.

[Approved 02-27-17.]