

Ala. Code 1975, §15-23-19

Failing to Disclose Conflict of Interest

The defendant is charged with failing to disclose a conflict of interest.

A person commits the crime of failing to disclose a conflict of interest if he/she is a member, agent or employee of the Alabama Crime Victims Compensation Commission and he/she exercises any discretionary function in connection with a commission contract, purchase, payment or other pecuniary transaction pertaining to the commission without advance public disclosure of a known potential conflicting interest in the transaction.

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

- (1) The defendant was a member, agent or employee of the Alabama Crime Victim's Compensation Commission;
- (2) The defendant exercised a discretionary function in connection with a commission contract, purchase, payment or other pecuniary transaction pertaining to the commission;
- (3) The defendant did so without advance public disclosure of a potential conflicting interest in the transaction, **[insert the conflicting interest]**;
- (4) The defendant knew of the potential conflicting interest; **(AND)**
- (5) The Defendant acted **[insert appropriate mens rea element - See Use Notes]**.

A potential conflicting interest exists, but is not limited to, when the member, agent/ or employee of the commission is a director, president, general manager or similar executive officer, or owns directly or indirectly a substantial portion of any nongovernmental entity participating in the transaction. [15-23-19(b)]

Public disclosure means a public announcement and written notification to the Attorney General. [15-23-19(c)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of failing to disclose a conflict of interest, then you shall find the defendant guilty of failing to disclose a conflict of interest.

If you find that the State has failed to prove any one or more of the elements of the offense of failing to disclose a conflict of interest, then you cannot find the defendant guilty of failing to disclose a conflict of interest.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

No mens rea is listed in this offense; however, the statute requires proof that the conflict be “known.” It would be advisable to consider charging the jury to that effect.

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
- (2) A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts recklessly with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with criminal negligence with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 05/09/19]