

Ala. Code 1975, § 13A-8-10.2
THEFT OF SERVICES SECOND DEGREE
(Avoiding Payment - Value Between \$1500 & \$2500)

The defendant is charged with theft of services in the second degree.

A person commits the crime of theft of services in the second degree if he/she intentionally obtains services, the value of which is between \$1500 and \$2500, known by him/her to be available only for compensation by deception, threat, false token or other means to avoid payment for the services.

To convict, the State must prove beyond a reasonable doubt each of the following elements of theft of services in the second degree:

- (1) The defendant obtained services, **[Insert description of services]**, of another, **[Insert name of owner]**, by deception, threat, false token or other means to avoid payment;
- (2) The defendant knew the services were available only for compensation;
- (3) The services were between \$1500 and \$2500 in value; **(AND)**
- (4) The defendant intentionally obtained the services.

Obtains means:

- a. In relation to property, to bring about a transfer or purported transfer of a legally recognized interest in the property, whether to the obtainer or another;
(OR)
- b. In relation to labor or service, to secure performance thereof. [13A-8-1(7)]

Services includes but is not necessarily limited to labor, professional services, transportation, telephone or other public services, accommodation in motels, hotels, restaurants or elsewhere, admission to exhibitions, computer services and the supplying of equipment for use. [13A-8-10(b)]

[Read as appropriate] Where compensation for services is ordinarily paid immediately upon the rendering of them, as in the case of motels, hotels, restaurants and the like, absconding without payment or bona fide offer to pay is prima facie evidence that the services were obtained by deception. [13A-8-10(c)]

[Read as appropriate] Commodities of a public utility nature, such as gas, electricity, steam, and water, constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property. [13A-8-1(11)]

An *owner* is a person, other than the defendant, who has possession of or any other interest in the property involved, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property. [13A-8-1(9)]

[Read as appropriate] A secured party, as defined in Section 7-9A-102(a)(72), is not an owner in relation to a defendant who is a debtor, as defined in Section 7-9A-102(a)(28), in respect of property in which the secured party has a security interest, as defined in Section 7-1-201(37). [13A-8-1(9)]

Deception occurs when a person knowingly: **[Read as appropriate]**

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true;
- b. Fails to correct a false impression which the defendant previously has created or confirmed;
- c. Fails to correct a false impression when the defendant is under a duty to do so;
- d. Prevents another from acquiring information pertinent to the disposition of the property involved;
- e. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property when the defendant is under a duty to do so, whether that impediment is or is not valid, or is not a matter of official record; **(OR)**
- f. Promises performance which the defendant does not intend to perform or knows will not be performed. Failure to perform, standing

alone, however, is not proof that the defendant did not intend to perform.
[13A-8-1(1)]

[Read as appropriate] The term *deception* does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons. "Puffing" means an exaggerated commendation of wares or services.[13A-8-1(1)]

[Read as appropriate] A *threat* is a menace, however communicated, to: **[Read as appropriate]**

- a. Cause physical harm to the person threatened or to any other person;
- or
- b. Cause damage to property; or
- c. Subject the person threatened or any other person to physical confinement or restraint; or
- d. Engage in other conduct constituting a crime; or
- e. Accuse any person of a crime or cause criminal charges to be instituted against any person; or
- f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
- g. Reveal any information sought to be concealed by the person threatened; or
- h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- i. Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or
- j. Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or
- k. Do any other act which would not in itself substantially benefit the actor but which is calculated to harm substantially another person with respect to his or her health, safety, business, calling, career, financial condition, reputation, or personal relationships.

[13A-8-1(14)]

Value is the market value of the property at the time and place of the criminal act. [13A-8-1(15)]

[Read as appropriate] Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities shall be evaluated as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

b. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

When the value of property cannot be ascertained pursuant to the standards set forth above, its value shall be deemed to be an amount not exceeding five hundred dollars (\$500). [13A-8-1(15)]

[Read as appropriate] Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense; provided, that only one conviction may be had and only one sentence enforced for all thefts included in such aggregate. [13A-8-1(15)]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

A person acts with *intent* to deprive another of his/her property when he/she acts with the purpose of causing that result. [13A-2-2(1)]

[Read as appropriate] It is a defense to a prosecution for this offense that the defendant honestly believed that he/she had a claim to the property or services involved which he/she was entitled to assert in the manner which forms the basis of the charge against him/her. [13A-8-12(a)]

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

If you find that the State has failed to prove any one or more of the elements of the offense of theft of services in the second degree, then you cannot find the defendant guilty of theft of services in the second degree.

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

Use Note

The burden of injecting the above-stated defense to this offense is on the defendant, but this does not shift the burden of proof. [13A-8-12(b)] The jury should not be instructed that the defendant carries this burden.

[Approved 05-17-24]