

**Ala. Code 1975, § 13A-8-10.2**  
**THEFT OF SERVICES SECOND DEGREE**  
**(Diversion of Services - 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, having control over the disposition of services of others to which he/she is not entitled, he/she knowingly diverts those services, the value of which is between \$1500 and \$2500, to his/her own benefit or to the benefit of another not entitled thereto.

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 had control over the disposition of services **[Insert description of services]**, of others, **[Insert name of owner]**, to which he/she was not entitled;
- (2) The defendant diverted those services to his/her own benefit or to the benefit of another not entitled thereto;
- (3) The services were between \$1500 and \$2500 in value; **(AND)**
- (4) The defendant knowingly diverted the services.

*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)]

*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)]

**[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]**