

**Ala. Code 1975, § 13A-8-114**  
**Phishing**

The defendant is charged with phishing.

A person commits the crime of phishing if he/she by means of an Internet web page, electronic mail message, or otherwise using the Internet, solicits, requests, or takes any action to induce another person to provide identifying information by representing that the person, either directly or by implication, is a business, without the authority or approval of the business.

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

- (1) The defendant solicited, requested, or took any action to induce another person to provide identifying information;
- (2) The Defendant did so by representing that the person, either directly or by implication, was a business;
- (3) The Defendant did so without the authority or approval of the business;
- (4) The Defendant did so by means of an Internet web page, electronic mail message, or otherwise using the Internet; **(AND)**
- (5) The Defendant acted **[Insert appropriate mens rea element – See Use Note]**.

*Identifying information* are specific details that can be used to access a person's financial accounts, obtain identification, or to obtain goods or services, including, but not limited to:

- a. Social Security number.
- b. Driver's license number.
- c. Bank account number.
- d. Credit card or debit card number.
- e. Personal identification number (PIN).
- f. Automated or electronic signature.
- g. Unique biometric data.
- h. Account password. [13A-8-111(15)]

A *web page* is a location that has a single uniform resource locator or other single location with respect to the Internet. [13A8-111(24)]

*Electronic mail message* is a message sent to a unique destination that consists of a unique user name or mailbox and a reference to an Internet domain,

whether or not displayed, to which such message can be sent or delivered. [13A8-111(10)]

**[Read as appropriate]:** An interactive computer service provider shall not be held liable or found in violation of this section by identifying, removing, or disabling access to an Internet web page or other online location that such provider reasonably believes by clear and convincing evidence that it is being used to engage in a violation of this section. [13A-8-114(h)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of phishing, then you shall find the defendant guilty of phishing.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of phishing, then you shall find the defendant not guilty of phishing.

#### Use Note

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 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 risk 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.

Multiple violations resulting from a single action or act shall constitute one violation for the purposes of this section. [13A-8-114(b)]

[Approved October 18, 2019].