

Ala. Code 1975, § 13A-8-23(b)

UTILITY TAMPERING

(Value Exceeds \$500)

The defendant is charged with utility tampering.

A person commits the crime of utility tampering if he/she is a tenant, occupant, or any other person and commits any of the following acts which could, or in fact does, make gas, electricity, or water unlawfully available to such tenant, occupant, or person, or to another, and the value of the theft exceeds \$500:

[Read as appropriate]

(1) To connect any tube, pipe, wire, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, or water in such a manner as to permit the use of said gas, electricity, or water without the same passing through a meter or other instrument recording the usage for billing;

(2) To alter, injure, turn on, or prevent the action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, or water;

(3) To break, deface, or cause to be broken or defaced any seal, locking device, or other parts that make up a metering device for recording usage of gas, electricity, or water or a security system for the recording device;

(4) To remove a metering device for measuring quantities of gas, electricity, or water;

(5) To transfer from one location to another a metering device for measuring utilities of gas, electricity, or water;

(6) To use a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(7) To adjust the indicated consumption, to jam the measuring device, to bypass the meter or measuring device with a jumper so that it does not indicate use or registers incorrectly, or to otherwise obtain quantities of gas, electricity, or water from the utility without same passing through a metering device for measuring quantities of consumption for billing;

(8) To fabricate or to use a device to pick or otherwise tamper with the locks used to deter current diversion, meter tampering, and meter thefts;

(OR)

(9) To otherwise take any action resulting in the diversion or unauthorized use of gas, electricity, or water.

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

- (1) The defendant was a tenant, occupant, or any other person;
- (2) The defendant committed any of the following acts which could have, or in fact did, make gas, electricity, or water unlawfully available to such tenant, occupant, or person, or to another,

[Read as appropriate]

(a) To connect any tube, pipe, wire, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, or water in such a manner as to permit the use of said gas, electricity, or water without the same passing through a meter or other instrument recording the usage for billing;

(b) To alter, injure, turn on, or prevent the action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, or water;

(c) To break, deface, or cause to be broken or defaced any seal, locking device, or other parts that make up a metering device for recording usage of gas, electricity, or water or a security system for the recording device;

(d) To remove a metering device for measuring quantities of gas, electricity, or water;

(e) To transfer from one location to another a metering device for measuring utilities of gas, electricity, or water;

(f) To use a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(g) To adjust the indicated consumption, to jam the measuring device, to bypass the meter or measuring device with a jumper so that it does not indicate use or registers incorrectly, or to otherwise obtain quantities of gas, electricity, or water from the utility without same passing through a metering device for measuring quantities of consumption for billing;

(h) To fabricate or to use a device to pick or otherwise tamper with the locks used to deter current diversion, meter tampering, and meter thefts;

(OR)

(i) To otherwise take any action resulting in the diversion or unauthorized use of gas, electricity, or water;

(4) The value of the theft exceeded \$500; **(AND)**

(5) The defendant acted **[insert appropriate mens rea element - See Use Note]**.

A *tenant* or *occupant* shall include any person who occupies the whole or a part of any building whether alone or with others and shall include the owner. [13A-823(a)(3)]

A *person* includes a corporation, firm, company, or association. [13A-823(a)(2)]

An *owner* includes any part owner, joint owner, tenant-in-common, joint tenant, or tenant by the entirety of the whole or part of any building. [13A-823(a)(1)]

A *utility* is any public or private utility authorized to provide electricity, natural gas, or water or any combination thereof for sale to consumers in any particular service area. [13A-823(a)(4)]

Utility services are the products, commodities, and services provided by a utility to its customers. [13A-823(a)(5)]

Any property on which it is found to have electric, gas, or water utilities tampered with in violation of this section and capable of receiving gas, electricity, or water as a result of the use of any method of diversion prohibited herein shall be prima facie evidence and create against the tenant, occupant, or other person a presumption of intent to tamper or divert in violation of this section. [13A-823(c)]

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

If you find that the State has failed to prove any one or more of the elements of the offense of utility tampering, then you cannot find the defendant guilty of utility tampering.

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

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.

The provisions of this section are supplemental to the provisions of the offense of theft of services as provided in Section 13A-8-10, and shall in no way repeal or modify Section 13A-8-10. [13A-8-23(e)].

[Approved 05-17-24]