

Ala. Code 1975, § 13A-8-77
Theft by Taking Consigned Motor Fuels Without Consent of
Owner (Value Exceeds \$2500)

The defendant is charged with theft by taking consigned motor fuels without the consent of the owner.

A person commits the crime of theft by taking consigned motor fuels without the consent of the owner if he/she takes, uses, sells, or disposes of consigned motor fuels or the proceeds from the sale of consigned motor fuels of a value exceeding \$2500 without the consent of the owner and in violation of the written agreement required in Section 13A-8-76.

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

- (1) The Defendant took, used, sold, or disposed of consigned motor fuels or the proceeds from the sale of consigned motor fuels;
- (2) The Defendant did so without the consent of the owner, **[Insert name]**;
- (3) The Defendant did so in violation of the written agreement as required in Section 13A-8-76;
- (4) The value of the consigned motor fuels or the proceeds from the sale of the consigned motor fuels exceeded \$2,500; **(AND)**
- (5) The Defendant acted **[insert appropriate mens rea element – See Use Note]**.

Consigned motor fuels means all grades of gasoline including gasohol or any gasoline blend, number 1 diesel, number 2 diesel, kerosene, and all aviation fuels delivered to a merchant by another for the purpose of sale and the merchant deals in goods of that kind. Consigned motor fuels are not owned by the party to whom the fuels are delivered for sale, but remain the property of the company delivering or having the motor fuels delivered. The merchant agrees to sell the consigned motor fuels belonging to another for a commission or other compensation. [13A-8-75]

A *written agreement* pursuant to Section 13A-8-76 requires that there shall be a written agreement between the person delivering or having the consigned motor fuels delivered for sale, hereinafter designated the consignor, and the merchant, hereinafter designated as the consignee, reflecting not only the consignment agreement between the parties, but that title to the consigned motor fuels and to the proceeds from the sale of the consigned motor fuels is always vested in the consignor and never the consignee. [13A-8-76]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of theft by taking consigned motor fuels without the consent of the owner, then you shall find the defendant guilty of theft by taking consigned motor fuels without the consent of the owner.

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 theft by taking consigned motor fuels without the consent of the owner, then you shall find the defendant not guilty of theft by taking consigned motor fuels without the consent of the owner.

Use Notes

Value was set by the theft statutes in effect at the time of the statute's passage and has not been amended despite the change in value in the theft of property laws. (13A-8-78)

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.

[Approved October 18, 2019].