

Ala. Code 1975, § 13A-9-14.1(c)

Misrepresentation to Issuer or Acquirer of Credit Card

The defendant is charged with misrepresentation to issuer or acquirer of a credit card.

A person commits the crime of misrepresentation to issuer or acquirer of a credit card if he/she is authorized by an issuer or an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, and, with intent to defraud the issuer, the acquirer, or the cardholder, fails to furnish money, goods, services, or anything else of value which he/she represents in writing, electronically or otherwise to the issuer or the acquirer that he/she has furnished.

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

- (1) The defendant was authorized by an issuer or an acquirer, **[insert name]**, to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person;
- (2) The defendant failed to furnish money, goods, services, or anything else of value, **[describe]**, which he/she represented in writing, electronically or otherwise to the issuer or the acquirer that he/she had furnished; **(AND)**
- (3) The defendant did so with intent to defraud the issuer, the acquirer, or the cardholder.

An *issuer* is the business organization or financial institution, or its duly authorized agent, which issues a credit card. [13A-9-14.1(a)(6)]

An *acquirer* is a business organization including without limitation a merchant, financial institution, or an agent of a business organization or financial institution that authorizes a merchant to accept payment by credit card for money, goods, services, or anything else of value. [13A-9-14.1(a)(1)]

A *credit card* is any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, or debit card or by any other name, including an account number, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device. [13A-9-14.1(a)(4)]

A *cardholder* is the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer. [13A-9-14.1(a)(2)]

Intent to defraud is a purpose to use deception, or to injure another person's interest which has value. [13A-9-1(8)]

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

- a. Creates or confirms another's impression which is false and which the defendant does not believe to be true; or
- b. Fails to correct a false impression which the defendant previously has created or confirmed; or
- c. Fails to correct a false impression when the defendant is under duty to do so; or
- d. Prevents another from acquiring information pertinent to the disposition of the property involved; or
- 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.

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]: *Value* is the market value of the property at the time and place of the criminal act. 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 as 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).

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)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of misrepresentation to issuer or acquirer of a credit card, then you shall find the defendant guilty of misrepresentation to issuer or acquirer of a credit card.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of misrepresentation to issuer or acquirer of a credit card, then you cannot find the defendant guilty of misrepresentation to issuer or acquirer of a credit card.

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

[Approved 6-17-16.]