

**Ala. Code 1975, § 13A-9-41**

**Deceptive Business Practices**

The defendant is charged with deceptive business practices.

A person commits the crime of deceptive business practices if in the course of engaging in a business, occupation, or profession, he/she (1) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or (2) sells, offers, or exposes for sale, or delivers, less than the represented quantity of any commodity or service; or (3) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he/she furnishes the weight or measure; or (4) sells, offers or exposes for sale adulterated commodities; or (5) sells, offers, or exposes for sale mislabeled commodities.

To convict, the State must prove beyond a reasonable doubt each of the following elements: **[Read as appropriate]:**

- (1) (A) The Defendant used or possessed for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity, **[description of device]**, in the course of engaging in a business, occupation, or profession; **(OR)**  
  
(B) The Defendant sold, offered, or exposed for sale, or delivered, less than the represented quantity of any commodity or service, **[name commodity or service]**, in the course of engaging in a business, occupation, or profession; **(OR)**  
  
(C) The Defendant took or attempted to take more than the represented quantity of any commodity or service, **[name commodity or service]** when as buyer he/she furnished the weight or measure, in the course of engaging in a business, occupation, or profession; **(OR)**  
  
(D) The Defendant sold, offered or exposed for sale adulterated commodities, **[describe]**, in the course of engaging in a business, occupation, or profession; **(OR)**  
  
(E) The Defendant sold, offered or exposed for sale mislabeled commodities, **[describe]**, in the course of engaging in a business, occupation, or profession.

**[Read as appropriate]: (AND)**

- (2) The Defendant did so knowingly or recklessly.

**[Read as appropriate]:** *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-9-40(b) & 13A-8-10(b)]

**[Read as appropriate]:** *Adulterated* means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage. [13A-9-41(c)]

**[Read as appropriate]:** *Mislabeled* means (1) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or (2) represented as being another person's product, though otherwise labeled accurately as to quality and quantity. [13A-9-41(d)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

A person acts *recklessly* with respect to a result or to a circumstance described by a statute defining an offense when he/she is aware of and consciously disregards 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 disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. **[A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in Section 13A-3-2(e)(2), acts recklessly with respect thereto.]** [13A-2-2(3)]

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

If you find that the State has failed to prove any one or more of the elements of deceptive business practices, then you cannot find the defendant guilty of deceptive business practices.

### **Use Notes**

It shall be a defense to a prosecution under this section if the actor acts neither knowingly nor recklessly. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof. [13A-9-41(b)]

[Approved 02-27-17.]