, the defendant in this case, has been charged with the crime of theft by deception in the fourth degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant intended to deprive another of property or to appropriate property of another to the defendant, or a third person;

(2) the defendant obtained the property of another; and

(3) the defendant obtained the property by deception.

["Deception" does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed.]

[That the defendant used deception by promising performance which he or she did not intend to perform or knew would not be performed is not established solely by or inferred solely from the fact that the promise was not performed.]

# USE NOTE

The following terms are defined in other instructions:

"appropriate" – 11.46.990

"deception" – 11.81.900(b)

"deprive" – 11.46.990

"intentionally" - 11.81.900(a)

"obtain" – 11.46.990

"property" - 11.81.900(b)

"property of another" – 11.46.990

Theft in the Fourth Degree is defined as theft of property worth less than $250; however, any value will suffice. Because property having a greater value than $250 is not a defense, this instruction does not include the value element. *See* AS 11.81.615.