**CONCEALMENT OF MERCHANDISE 11.46.220(c)(2)(B)**

**(CLASS A MISDEMEANOR)**

**Revised 2017**

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 , the defendant in this case, has been charged with the crime of concealment of merchandise.

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

(1) the defendant knowingly concealed on or about the defendant’s person the merchandise of a commercial establishment;

(2) the defendant had no authority to conceal the merchandise;

(3) the defendant had not purchased the merchandise;

(4) the defendant was still upon the premises of the commercial establishment when the merchandise was concealed;

(5) the defendant intended to deprive the owner of the merchandise or appropriate the merchandise;

(6) the value of the merchandise was less than $250; and

(7) within the past five years, the defendant has been convicted and sentenced for theft or concealment of merchandise on two or more separate occasions in this or another jurisdiction.]

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# USE NOTE

The following terms are defined in other instructions:

“appropriate” – 11.46.990

“deprive” – 11.46.990

“intentionally” – 11.81.900(a)

“knowingly” – 11.81.900(a)

“premises” – 11.81.900(b)

For determination of value, see 11.46.980.

This theory of concealment of merchandise requires proof that the defendant has two or more prior convictions. In Ostlund v. State, 51 P.3d 938 (Alaska App. 2002), the court held that the trial court shall bifurcate the determination of previous convictions unless the trial judge determines the convictions are relevant for a purpose other than to establish that the offense was a felony and are admissible under Evidence Rule 403. The prior convictions element is therefore placed in a separate instruction to be given in the bifurcated second stage of the trial.