

1 **14-4320. Defense; exempt security.**¹

2 [~~Evidence has been presented that~~] An issue in this case is whether the security which was
3 (sold)² (offered for sale) [as charged in Count _____]³ was an exempt security and was not
4 required to be registered under the State Securities Act. A security which is
5 [(issued by)² (insured by) (guaranteed by) a _____,⁴]²
6 [an option issued by _____,⁴] [a _____,⁴]
7 is an exempt security and is not required to be registered by the state securities law.

8 If you find that the security was

9 [(issued by)² (insured by) (guaranteed by) a _____,⁴]²
10 [an option issued by _____,⁴] [a _____,⁴]

11 you must find the defendant not guilty of the sale of an unregistered security [as charged in Count
12 _____]³.

13 The burden is on the state to prove beyond a reasonable doubt that the security
14 (sold)² (offered for sale) was not an exempt security.

15

16 **USE NOTES**

17 1. For use if there is an issue that the sale or offer for sale was an exempt security
18 under the State Securities Act.

19 2. Use only the applicable alternative.

20 3. Insert the count number if more than one count is charged.

21 4. See NMSA 1978, Section 58-13B-26 [~~NMSA 1978~~] for the types of exempt
22 securities. Many of the terms set forth in NMSA 1978, Section 58-13B-26 [~~NMSA 1978~~] have
23 been defined in UJI 14-4310 and 14-4311 NMRA.

1 [Approved, effective September 1, 1988; as amended by Supreme Court Order No. 20-8300-004,
2 effective for all cases pending or filed on or after December 31, 2020.]

3 **Committee commentary.**— Certain securities are not required to be registered prior to
4 sale or offer for sale. It is a defense to the offense of selling or offering to sell an unregistered
5 security if the security transaction is an exempt transaction or the security is an exempt security.
6 Other defenses, such as “mistake of fact” and good faith reliance on the advice of counsel are not
7 available to the charge of offer to sell or sale of unregistered securities. See *State v. Shafer*~~[*et al.*]~~,
8 1985-NMCA-0018, 102 N.M. 629, 698 P.2d 902 [~~(Ct.App., 1985)~~] (cert. den. 102 N.M. 613).

9 [As amended for stylistic compliance by Supreme Court Order No. 20-8300-004, effective for all
10 cases pending or filed on or after December 31, 2020.]