

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

2 An issue in this case is whether the security which was [~~(sold)~~²-~~(offered for sale)~~] [sold]
3 [offered for sale]²[as charged in Count _____]³ was an exempt security and was not required
4 to be registered under the [~~State Securities Act~~] New Mexico Uniform Securities Act. A security
5 which is

6 [[~~(issued by)~~²-~~(insured by)~~-~~(guaranteed by)~~] [issued by] [insured by] [guaranteed
7 by]² a _____,⁴²

8 [an option issued by _____,⁴] [a _____,⁴]

9 is an exempt security and is not required to be registered [~~by the state securities law~~] under the
10 New Mexico Uniform Securities Act.

11 If you find that the security was

12 [[~~(issued by)~~²-~~(insured by)~~-~~(guaranteed by)~~] [issued by] [insured by] [guaranteed
13 by]² a _____,⁴²

14 [an option issued by _____,⁴] [a _____,⁴]

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

17 The burden is on the state to prove beyond a reasonable doubt that the security [~~(sold)~~²
18 ~~(offered for sale)~~] [sold] [offered for sale]²-was not an exempt security.

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USE NOTES

21 1. For use if there is an issue that the sale or offer for sale was an exempt security
22 under the [~~State Securities Act~~] New Mexico Uniform Securities Act, Section 58-13C-201 NMSA
23 1978.

- 1 2. Use only the applicable alternative.
- 2 3. Insert the count number if more than one count is charged.
- 3 4. See Section ~~[58-13B-26]~~ 58-13C-201 NMSA 1978 for the types of exempt
- 4 securities. Many of the terms set forth in Section ~~[58-13B-26]~~ 58-13C-201 NMSA 1978 have been
- 5 defined in UJIs 14-4310 and 14-4311 NMRA.
- 6 [Approved, effective September 1, 1988; as amended by Supreme Court Order No. 20-8300-004,
- 7 effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme
- 8 Court Order No. 21-8300-009 , effective for all cases pending or filed on or after December 31,
- 9 2021.]
- 10 **Committee commentary.** — Certain securities are not required to be registered prior to sale or
- 11 offer for sale. It is a defense to the offense of selling or offering to sell an unregistered security if
- 12 the security transaction is an exempt transaction or the security is an exempt security. Other
- 13 defenses, such as “mistake of fact” and good faith reliance on the advice of counsel are not
- 14 available to the charge of offer to sell or sale of unregistered securities. *See State v. Shafer*, [~~et al.,~~]
- 15 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902 [(Ct. App., 1985) (cert. denied 102 N.M. 613)].
- 16 [As amended by Supreme Court Order No. 21-8300-009; effective for all cases pending or filed
- 17 on or after December 31, 2021.]