**14-1694. Fraudulent acts by merchants or their employees; representing that something of value has been furnished; essential elements.**

For you to find the defendant guilty of fraudulently representing that something of value has been furnished [as charged in Count \_\_\_\_\_\_\_\_\_\_1], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. In the defendant’s capacity as [a merchant2] [an employee of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]3, the defendant falsely represented in writing to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*issuer or participating party*2) that he furnished \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*describe money, goods or services allegedly furnished*) on a credit card2 of the issuer2, which had a market value4 of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_5;

2. The defendant [did not furnish such goods or services]3 [furnished goods or services of a market value only of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_5]3;

[3. The difference between the represented market value and the actual market value is \_\_\_\_\_\_\_\_\_\_\_\_\_\_6];

4. The defendant intended to deceive or cheat; and

5. This happened in New Mexico on or about the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_.

USE NOTES

1. Insert the count number if more than one count is charged.

2. If the jury requests a definition of "merchant," "credit card," "issuer" or "participating party," the statutory definition set forth in Section 30-16-25 NMSA 1978 is to be given.

3. Use applicable alternative.

4. *See* UJI 14-1602 for definition of "market value."

5. Insert the applicable represented or actual value.

6. If the charge is a second degree felony (over $20,000), use "over $20,000" in the blank. If the charge is a third degree felony (over $2,500), use "over $2,500" in the blank. If the charge is a fourth degree felony (over $500), use "over $500" in the blank. If the charge is a misdemeanor (over $250), use "over $250" in the blank. If the charge is a petty misdemeanor (under $250), use "under $250" in the blank.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]