

18.25

Definition Of Failure To Possess A Firearm Owner's Identification Card

A person commits the offense of failure to possess a firearm owner's identification card when he knowingly [(acquires) (possesses)] [(a firearm) (firearm ammunition)] at a time when he does not have in his possession a firearm owner's identification card previously issued in his name by the Department of State Police.

Committee Note

430 ILCS 65/2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §83-2(a) (1991)).

Give Instruction 18.26.

Persons identified in Section 65/2(b), including members of the armed forces, federal marshals and others, are excepted from the requirement of possessing a firearm owner's identification card. Section 65/2(b), however, does not indicate whether these exceptions are to be treated as exemptions from criminal liability or are to be treated as affirmative defenses. If Section 65/2(b) creates exemptions from criminal liability, then the defendant has the burden of proving the exemptions by a preponderance of the evidence, *People v. Smith*, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978), and the instructions may be patterned after Instructions 18.01A and 18.02. If Section 65/2(b) creates an affirmative defense, then the State has the burden of disproving the exception once raised by the evidence (Section 3-2) and the instructions should follow the format suggested in the Committee Note to Instructions 18.09 and 18.10. Although the Committee takes no position on the issue, the fact that the legislature has not labeled the provisions of Section 65/2(b) as an affirmative defense is some indication that the exceptions in Section 65/2(b) should be treated as exemptions. See *People v. Smith*, 71 Ill.2d 95, 374 N.E.2d 472, 15 Ill.Dec. 864 (1978) (“whenever the legislature intends a provision to constitute an affirmative defense it has labeled it as such”).

Use applicable bracketed material.