

"DRAM SHOP" LIABILITY--STATUTORY--RIGHT OF ACTION LOST BY AIDING OR ABETTING SALE OR FURNISHING. G.S. 18B-120(1).

Note Well: A person who aids or abets in the sale or furnishing of an alcoholic beverage to an underage person is not an "aggrieved party" entitled to recover under G.S. 18B-121. See G.S. 18B-120(1).

The (state number) issue reads:

"Did the plaintiff aid or abet the [sale] [furnishing] of (specify alcoholic beverage) to (name underage person)?"

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the plaintiff aided or abetted the [sale] [furnishing] of (specify alcoholic beverage) to (name underage person).

A person aids or abets the [sale] [furnishing] of an alcoholic beverage to an underage person when he is present at the time of the [sale] [furnishing] and knowingly advises, instigates, encourages or aids either the seller or the underage person to [make the sale or purchase] [furnish or obtain an alcoholic beverage]. (A person also aids or abets a [sale] [furnishing] even though he is not present if he shares the unlawful purpose of the underage person and, with the underage person's knowledge, aids or is in a position to aid him at the time he [makes the purchase] [obtains the alcoholic beverage].)

However, a person is not an aider or abettor merely because

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he is present¹ at the time of the [sale] [furnishing], even though he may silently approve and intend to assist if necessary. To be an aider or abettor, he must aid or actively encourage, or in some way communicate to the seller or underage person his intention to assist in [making the sale or purchase] [obtaining an alcoholic beverage].

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff aided or abetted a [sale] [furnishing] of (*specify alcoholic beverage*) by the defendant to (*name underage person*), then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

¹It should be noted, however, that there is an exception to the rule that mere presence does not make one an accessory: "[W]hen the bystander is a friend of the perpetrator, and knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement, and in contemplation of law this was aiding and abetting." State v. Beach, 283 N.C. 261, 267-68, 196 S.E.2d 219 (1973), overruled on other grounds, State v. Adcock, 310 N.C. 1, 36, 310 S.E.2d 587, 607 (1984).