

LEXSTAT NCGS 18B-301

GENERAL STATUTES OF NORTH CAROLINA  
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\*\*\* ANNOTATIONS CURRENT THROUGH MARCH 21, 2008 \*\*\*

CHAPTER 18B. REGULATION OF ALCOHOLIC BEVERAGES  
ARTICLE 3. SALE, POSSESSION, AND CONSUMPTION

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*N.C. Gen. Stat. § 18B-301 (2008)*

§ 18B-301. Possession and consumption of fortified wine and spirituous liquor

(a) Possession at Home. -- It shall be lawful, without an ABC permit, for any person at least 21 years old to possess for lawful purposes any amount of fortified wine and spirituous liquor at his home or a temporary residence, such as a hotel room.

(b) Possession on Other Property. -- It shall be lawful, without an ABC permit, for a person to possess for his personal use and the use of his guests not more than eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, at the following places:

(1) The residence of any other person with that person's consent;

(2) Any other property not primarily used for commercial purposes and not open to the public at the time the alcoholic beverage is possessed, if the owner or other person in charge of the property consents to that possession and consumption;

(3) An establishment with a brown-bagging permit as defined in *G.S. 18B-1001(7)*.

(c) Special Occasions. -- It shall be lawful for a person to possess, without a permit and not for sale, any amount of fortified wine or spirituous liquor for a private party, private reception, or private special occasion, at the following places:

(1) His home or a temporary residence, such as a hotel room;

(2) Any other property not primarily used for commercial purposes, which is under his exclusive control and supervision, and which is not open to the public during the event;

(3) The licensed premises of any business for which the Commission has issued a special occasions permit under *G.S. 18B-1001(8)*, if he is the host of that private function and has the permission of the permittee.

(d) Consumption. -- It shall be lawful for a person to consume fortified wine and spirituous liquor in any place where it is lawful for him to possess those alcoholic beverages under subsections (a) through (c).

(e) Incident to Sale. -- It shall be lawful to possess fortified wine and spirituous liquor at any place, such as an ABC store, where possession is a necessary incident to lawful sale. Consumption at such a place shall be unlawful unless the establishment has a permit authorizing consumption on the premises as well as sale.

(f) Unlawful Possession or Use. -- As illustration, but not limitation, of the general prohibition stated in *G.S. 18B-102(a)*, it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:

- a. On the premises of an ABC store, or
- b. Upon any property used or occupied by a local board, or
- c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

(7) Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. Provided, however, the prohibition in *G.S. 18B-102(a)* and this subdivision shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board.

**HISTORY:** 1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; c. 747, s. 39; 1983, c. 917, s. 1; 1985, c. 566, s. 1; 1991, c. 459, s. 1; 1993, c. 508, s. 1; 1995, c. 372, s. 1.

**NOTES:**

EDITOR'S NOTE. --Session Laws 1983, c. 917, s. 1, which added subdivision (7) of subsection (f), amended *G.S. 18-301*, which had been repealed, but it was clearly intended to amend *G.S. 18B-301*.

LEGAL PERIODICALS. --For survey of 1978 administrative law, see *57 N.C.L. Rev. 831 (1979)*.

For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see *1 Campbell L. Rev. 61 (1979)*.

Alcohol Distribution & Sales

CASE NOTES

**CLASSIFICATION OF ESTABLISHMENTS REQUIRING BROWN-BAGGING PERMITS.** --Classification of establishments requiring brown-bagging permits is legislative, and not legal. *Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974)*, (decided under similar provisions of former Chapter 18A).

Where the legislature makes the classification, the courts are not authorized to supplant the legislative intent and purpose by substituting their own. *Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974)*, (decided under similar provisions of former Chapter 18A).

**BURDEN ON PLAINTIFF TO SHOW UNREASONABLE CLASSIFICATION.** --The legislature is presumed to have provided for a reasonable classification and the burden is on the plaintiff to show the classification is unreasonable. *Hursey v. Town of Gibsonville, 284 N.C. 522, 202 S.E.2d 161 (1974)*, (decided under similar provisions of former Chapter 18A).

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*N.C. Gen. Stat. § 18B-300 (2008)*

§ 18B-300. Purchase, possession and consumption of malt beverages and unfortified wine

(a) Generally. -- Except as otherwise provided in this Chapter, the purchase, consumption, and possession of malt beverages and unfortified wine by individuals 21 years old and older for their own use is permitted without restriction.

(b) Consumption at Off-Premises Establishment. -- It shall be unlawful to consume, or for a permittee to allow the consumption of, malt beverages or unfortified wine on any premises having only an off-premises permit for the kind of alcoholic beverage being consumed.

(c) Local Ordinance. -- A city or county may by ordinance:

(1) Regulate or prohibit the consumption of malt beverages and unfortified wine on the public streets in that city or county by persons who are not occupants of motor vehicles and on property owned, occupied, or controlled by that city or county;

(2) Regulate or prohibit the possession of open containers of malt beverages and unfortified wine on public streets in that city or county by persons who are not occupants of motor vehicles and on property owned, occupied, or controlled by that city or county; and

(3) Regulate or prohibit the possession of malt beverages and unfortified wine on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events.

For the purposes of this subsection, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container. As provided by *G.S. 18B-102(a)*, possession or consumption of alcoholic beverages is unlawful except as authorized by the ABC law.

**HISTORY:** 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1973, c. 1452, ss. 1-3; 1977, c. 176, ss. 2, 3; c. 693; 1979, c. 19, s. 2; c. 445, s. 4; c. 893, s. 11; 1981, c. 412, s. 2; 1983, c. 435, s. 32; 1985, c. 141, s. 1; 1995, c. 144, s. 1; c. 366, s. 2; 2001-79, s. 1.

**NOTES:**

LOCAL MODIFICATION. --Town of Beaufort: 1985, c. 293.

EDITOR'S NOTE. --Session Laws 1985, c. 141, which amended this section effective September 1, 1986, in s. 6 provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4, and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4, and 5 shall revert to the form they would have without the amendments made by these sections.

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#### **CASE NOTES**

MUNICIPAL ORDINANCE HELD INVALID. --A municipal ordinance providing that "No person shall have open and in his possession, . . . beer, . . . on or in the public streets" conflicted with former G.S. 18A-35(a); therefore, the municipal ordinance was invalid, and warrants drawn thereunder charging defendants with the possession of open beer were properly quashed. *State v. Williams*, 283 N.C. 550, 196 S.E.2d 756 (1973) (decided under similar provisions of former Chapter 18A).

CITED in *State v. Swift*, 105 N.C. App. 550, 414 S.E.2d 65 (1992).