

N.C.P.I.-Crim. 270.40  
TRANSPORTING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE.  
MISDEMEANOR.  
GENERAL CRIMINAL VOLUME  
JUNE 2010  
N.C. Gen. Stat. § 20-138.7(a)  
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207.40 TRANSPORTING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE.  
MISDEMEANOR.

*NOTE WELL: See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment.*

The defendant has been charged with transporting an open container<sup>1</sup> of an alcoholic beverage.

For you to find the defendant guilty of this offense, the State must prove [four] [five] things beyond a reasonable doubt:

First, that the defendant was driving<sup>2</sup> a motor vehicle<sup>3</sup>.

Second, that the defendant was driving that vehicle upon a [highway] [street] [right-of-way of a highway] within the state.<sup>4</sup>

Third, that the defendant drove while there was an alcoholic beverage<sup>5</sup> in the passenger area<sup>6</sup> in other than the unopened manufacturer's original container.

(And) Fourth, that the defendant drove [while consuming alcohol] [while alcohol remained in the driver's body].<sup>7</sup>

*NOTE WELL: If there is evidence to support a charge on a previous conviction and the defendant denies a previous conviction or remains silent, then this instruction should be amended to add the fifth element that follows. If the defendant admits the previous convictions, this element would not be added. In such case, a transcript of plea is required for the admission of these convictions. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment. The mandate should be amended in keeping with this addition.*

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((And) Fifth, that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] transporting a container of alcoholic beverage that was committed on (*name date*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant drove a motor vehicle upon a [highway] [street] [right-of-way of a highway] within the state while there was an alcoholic beverage in the passenger area in other than the unopened manufacturer's original container, and [while consuming alcohol] [while alcohol remained in the driver's body], (and that on (*name date*) the defendant, in (*name court*) [was convicted of] [pled guilty to] transporting a container of alcoholic beverage that was committed on (*name date*), it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.<sup>8</sup>

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1. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. N.C. Gen. Stat. § 20-138.7(f).

2. N.C. Gen. Stat. § 20-4.01 defines the driver as the operator of a vehicle.

3. Under this section, the term "motor vehicle" means only those types of motor vehicles which North Carolina law requires to be registered, whether the motor vehicle is registered in North Carolina or another jurisdiction. N.C. Gen. Stat. § 20-138.7(a3).

4. If there is any doubt, define "highway" in accordance with N.C. Gen. Stat. § 20-4.01(13).

5. The term "alcoholic beverage" is as defined in N.C. Gen. Stat. § 18B-101(4).

6. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. N.C. Gen. Stat. § 20-138.7(f).

7. Per N.C. Gen. Stat. § 20-138.7(a2), it shall not be a violation of subsection (a1)

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of this section for a passenger to possess an alcoholic beverage other than in the unopened manufacturer's original container, or for a passenger to consume an alcoholic beverage, if the container is:

- (1) In the passenger area of a motor vehicle that is designed, maintained, or used primarily for the transportation of persons for compensation;
- (2) In the living quarters of a motor home or house car as defined in N.C. Gen. Stat. § 20-4.01(27)d2.; or
- (3) In a house trailer as defined in N.C. Gen. Stat. § 20-4.01(14).

8. Note that possession of an open container can be a lesser included offense pursuant to N.C. Gen. Stat. § 20-138.7(e).