



CHAPTER 20
ARTICLE 3 - MOTOR VEHICLE ACT OF 1937

N.C.G.S. § 20-138.7.

Transporting an open container of alcoholic beverage.

SOURCE General Statutes of North Carolina, as published by the General Assembly	LAST AMENDMENT IN THIS TEXT S.L. 2025-65, s. 4(b) — tenth act in the lineage	RETRIEVED 21 September 2026, 04:22 UTC	SOURCE FINGERPRINT ccdda4185a35fd63db9989e7 - e4cbbbf45e4628d99a10cda8 - 7832a11394cd094f
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§ 20-138.7(a) Offense. - No person shall drive a motor vehicle on a highway or the right-of-way of a highway while both of the following conditions are met:

- (1) There is an alcoholic beverage in the passenger area in other than the unopened manufacturer's original container.
- (2) The driver is consuming alcohol or while alcohol remains in the driver's body.

§ 20-138.7(a1) Offense. - No person shall possess an alcoholic beverage other than in the unopened manufacturer's original container, or consume an alcoholic beverage, in the passenger area of a motor vehicle while the motor vehicle is on a highway or the right-of-way of a highway. For purposes of this subsection, only the person who possesses or consumes an alcoholic beverage in violation of this subsection shall be charged with this offense.

§ 20-138.7(a2) Exception. - It shall not be a violation of subsection (a1) 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 G.S. 20-4.01(27)k.; or
- (3) In a house trailer as defined in G.S. 20-4.01(14).

- § 20-138.7(a3)** **Meaning of Terms.** - Under this section, the term "motor vehicle" means any vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways and includes mopeds.
- § 20-138.7(b)** **Subject to Implied-Consent Law.** - An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.
- § 20-138.7(c)** **Odor Insufficient.** - The odor of an alcoholic beverage on the breath of the driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section, unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.
- § 20-138.7(d)** **Alcohol Screening Test.** - Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Department of Health and Human Services, and the screening test is conducted in accordance with the applicable rules adopted by the Department of Health and Human Services as to the manner of its use.
- § 20-138.7(e)** **Punishment; Effect When Impaired Driving Offense Also Charged.** - Violation of subsection (a) of this section shall be a Class 3 misdemeanor for the first offense and shall be a Class 2 misdemeanor for a second or subsequent offense. Violation of subsection (a) of this section is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under subsection (a) of this section and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) of this section by the driver of the motor vehicle is a lesser-included offense of subsection (a) of this section. A violation of subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).
- Violation of subsection (a1) of this section shall be an infraction and shall not be considered a moving violation for purposes of G.S. 20-16(c).

INFRACTION

§ 20-138.7(f)

Definitions. - If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. 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. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

§ 20-138.7(g)

Pleading. - In any prosecution for a violation of subsection (a) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a motor vehicle on a highway or the right-of-way of a highway with an open container of alcoholic beverage after drinking.

In any prosecution for a violation of subsection (a1) of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that (i) the defendant possessed an open container of alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right-of-way of a highway, or (ii) the defendant consumed an alcoholic beverage in the passenger area of a motor vehicle while the motor vehicle was on a highway or the right-of-way of a highway.

§ 20-138.7(h)

Limited Driving Privilege. - A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may issue the limited driving privilege only if the driver meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction.

END OF SECTION TEXT

APPARATUS FOLLOWS — DERIVED, NOT ENACTED

APPARATUS I
10 ACTS

Amendment lineage

The State prints this history as a single parenthetical at the foot of the section. It is reproduced verbatim in the colophon and unpacked below in order of enactment.

1995		2010		2025	
TICK HEIGHT = ACTS IN THAT YEAR		DASHED = RECODIFICATION, NOT AMENDMENT			
Nº	YEAR	ACT	CHARACTER		
01	1995	c. 506, s. 9	ENACTED		
02	2000	S.L. 2000-155, s. 4	AMENDED		
03	2002	S.L. 2002-25, s. 1	AMENDED		
04	2006	S.L. 2006-66, s. 21.7	AMENDED		
05	2007	S.L. 2007-182, s. 2	AMENDED		
06	2013	S.L. 2013-348, s. 4	AMENDED		
07	2017	S.L. 2017-102, s. 5.2(b)	AMENDED		
08	2024	S.L. 2024-41, s. 5(b)	AMENDED		
09	2025	S.L. 2025-27, s. 4.2(b)	AMENDED		
10	2025	S.L. 2025-65, s. 4(b)	AMENDED		

APPARATUS II
9 AUTHORITIES

Authorities referenced

Every G.S. cross-reference appearing in the text of this section, in order of first appearance. Nothing is characterized; the operative language is quoted from the section itself.

REFERENCE	APPEARS IN	OPERATIVE LANGUAGE IN THIS SECTION
G.S. 20-4.01(27)	(a2)(2)	"or house car as defined in"
G.S. 20-4.01(14)	(a2)(3)	"a house trailer as defined in"
G.S. 20-16.2	(b)	"subject to the implied-consent provisions of"
G.S. 20-138.1	(e)	"included offense of impaired driving under"
G.S. 20-16(c)	(e)	"a moving violation for purposes of"
G.S. 18B-101(4)	(f)	""alcoholic beverage" is as defined in"
G.S. 20-179.3	(h)	"driving privilege as provided for in"
G.S. 20-179.3(b)(1)	(h)	"20-179.3, other than the requirement in"
G.S. 20-179.3(e)	(h)	"than the requirement in G.S. 20-179.3(b)(1)c. "

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 20-138.7 (2025).

PINPOINT

N.C. Gen. Stat. § 20-138.7(a) (2025).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

COLOPHON

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HISTORY PARENTHETICAL, AS PRINTED BY THE STATE

(1995, c. 506, s. 9; 2000-155, s. 4; 2002-25, s. 1; 2006-66, s. 21.7; 2007-182, s. 2; 2013-348, s. 4; 2017-102, s. 5.2(b); 2024-41, s. 5(b); 2025-27, s. 4.2(b); 2025-65, s. 4(b).)

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