

IMPAIRED DRIVING IN A COMMERCIAL VEHICLE. MISDEMEANOR.—G.S. 20-138.2 & 20-138.2A.

*NOTE WELL: This instruction is to be used for offenses committed before December 1, 2006. For offenses committed on or after that date, use N.C.P.I. - Crim. 270.21A.*

*NOTE WELL: This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving under 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.*

The defendant has been charged with impaired driving of a commercial vehicle.

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

First, that the defendant was driving<sup>1</sup> a commercial motor vehicle.<sup>2</sup>

Second, that the defendant was driving that vehicle upon a [highway] [street] [public vehicular area] within the state.<sup>3</sup>

And Third, that at the time the defendant was driving that vehicle the defendant:

*NOTE WELL: If the evidence supports submission of the case under both alternatives (A) and (B), instructions on both alternatives should be given.*

(A) [was under the influence of an impairing substance. (*Name substance*) is an impairing substance.<sup>4</sup> The defendant is under the influence of an impairing substance when the defendant has [taken] [consumed] a sufficient quantity of

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1. G.S. 20-4.01 defines driver as the operator of a vehicle.

2. G.S. 20-4.01(3d)a and b defines commercial vehicle. See also State v. Jones, 140 N.C. App. 691, 538 S.E.2d 228 (2000).

3. If there is any doubt, define 'highway' or 'street' in accordance with G.S. 20-4.01(13). 'Public vehicular area' is defined in G.S. 20-4.01(32).

4. An impairing substance includes alcohol, controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

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that impairing substance to cause the defendant to lose the normal control of the defendant's bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties.]

- (B) [had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration of 0.04 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after driving that the driver still has in the driver's body alcohol consumed before or during driving].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant drove a commercial vehicle on a [highway] [street] [public vehicular area] in this state and that when the defendant did so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration of 0.04 or more], it would be your duty to return a verdict of guilty of impaired driving of a commercial vehicle. If you do not so find or if you have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of impaired driving of a commercial vehicle.

If you do not find the defendant guilty of impaired driving of a commercial vehicle, you must determine whether he is guilty of operating a commercial vehicle after consuming alcohol.<sup>5</sup> Operating a commercial vehicle after consuming alcohol differs from impaired driving of a

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<sup>5</sup> G.S. 20-138.2A became effective December 1, 1998.

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commercial vehicle in that the State need prove only that the defendant had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration greater than 0.00 but less than 0.04.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant drove a commercial vehicle on a [highway] [street] [public vehicular area] in this state and that when the defendant did so the defendant had consumed sufficient alcohol that at any relevant time after driving the defendant had a blood alcohol concentration of greater than 0.00 and less than 0.04, it would be your duty to return a verdict of guilty of operating a commercial vehicle after consuming alcohol. 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.

