

N.C.P.I.—CRIM 270.35  
POSSESSION OF AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE.  
MISDEMEANOR.  
GENERAL CRIMINAL VOLUME  
JUNE 2014  
N.C. Gen. Stat. § 20-138.7(a1)

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270.35 POSSESSION OF AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE.  
MISDEMEANOR.

The defendant has been charged with possession of an open container<sup>1</sup> of an alcoholic beverage.<sup>2</sup>

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 in the passenger area<sup>3</sup> of a motor vehicle<sup>4</sup>.

Second, that said vehicle was upon a [highway] [street] [right-of-way of a highway] within the state.<sup>5</sup>

And Third, that the defendant [possessed an alcoholic beverage<sup>6</sup> in the passenger area in other than the unopened manufacturer's original container] [consumed an alcoholic beverage].<sup>7</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant was in the passenger area of a motor vehicle upon a [highway] [street] [right-of-way of a highway] within the state, (and) [possessed an alcoholic beverage in the passenger area in other than the unopened manufacturer's original container] [consumed an alcoholic beverage], 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.

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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 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. N.C. Gen. Stat. § 20-138.7(a1).

3 For purposes of this section, "passenger area of a motor vehicle" means the area designed

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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).

4 Under this section, the term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways and includes mopeds. N.C. Gen. Stat. § 20-138.7(a3).

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

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

7. Per N.C. Gen. Stat. § 20-138.7(a2), 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 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).