

270.21A IMPAIRED DRIVING IN A COMMERCIAL VEHICLE. MISDEMEANOR.

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

*NOTE WELL: This offense is not a lesser included offense of impaired driving under N.C. Gen. Stat. § 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving under N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 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 alternative (A), (B) and (C), instructions on each alternative should be given.*

(A) [was under the influence of an impairing substance. (*Name substance involved*) is an impairing substance.<sup>4</sup> The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of 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<sup>5</sup> of either or both of these faculties.<sup>6</sup>]

- (B) [had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration<sup>7</sup> 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].<sup>8</sup> The results of a chemical analysis are deemed sufficient evidence to prove a person's alcohol concentration.<sup>9</sup>
- (C) [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's [blood] [urine] [breath]]. (*Name substance*) is a Schedule I controlled substance or is a metabolite<sup>10</sup> of a Schedule I controlled substance.].<sup>11</sup>

(If the evidence tends to show that [a chemical test known as a(n) [intoxilizer] [breathalyzer] [blood test] [urine test]<sup>12</sup> was offered to the defendant by a law enforcement officer and that the defendant refused to take the test] [the defendant refused to perform a field sobriety test at the request of an officer], you may consider this evidence together with all other evidence in determining whether the defendant was under the influence of an impairing substance at the time the defendant (allegedly) drove a motor vehicle.)<sup>13</sup>

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 doing 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] [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled

substance] in the defendant’s [blood] [urine] [breath]], it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as one or more of these things, you would not find the defendant guilty of impaired driving of a commercial vehicle, you must determine whether the defendant is guilty of operating a commercial vehicle after consuming alcohol.<sup>14</sup> Operating a commercial vehicle after consuming alcohol differs from impaired driving of a 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.

---

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

2. N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 20-4.01(13). “Public vehicular area” is defined in N.C. Gen. Stat. § 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. N.C. Gen. Stat. § 20-4.01(14a).

5. The phrase “appreciable impairment” is not defined in N.C. Gen. Stat. § 20-4.01 or other subsequent statutes. However, appellate case law has defined appreciable to mean the effect of the impairing substance “must be...sufficient to be recognized and estimated.” *State v. Harrington*, 78 N.C. App. 39, 45, 336 S.E.2d 852, 855 (1985). This additional language may be provided to the jury, if requested.

6. N.C. Gen. Stat. § 20-4.01(48b).

7. N.C. Gen. Stat. § 20-4.01(1b) defines alcohol concentration as “the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath.”

8. N.C. Gen. Stat. § 20-4.01(33a).

9. The term “deemed sufficient” is not defined in N.C. Gen. Stat. §§ 20-138.2 or 20-138.2A, N.C. Gen. Stat. § 20-141.4, other statutes or any appellate court decisions. Absent a specific definition, it can be presumed that the legislature intended the words to be given their ordinary meaning.

10. A metabolite is any substance produced or used during metabolism (digestion). In drug use, the term usually refers to the end product that remains after metabolism.

11. Driving with any Schedule I controlled substance, or its metabolites in one's [blood] [urine] [breath] is a *per se* violation of impaired driving offense.

12. Note that if the offense occurred between December 1, 2006 and June 27, 2007, there was no statutory provision during this time that required the defendant to take a urine test.

13. N.C. Gen. Stat. § 20-139.1(f).

14. N.C. Gen. Stat. § 20-138.2A became effective December 1, 1998.