

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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ALERT: OPEN CONTAINER LAWS IN NORTH CAROLINA

M. Kevin Smith and Ralph B. Strickland, Jr.

- While the general public knows it is never wise to have an open container of an alcoholic beverage in the passenger compartment of a motor vehicle, most are not aware of the legal consequences of such behavior. And certainly very few know that a person **may not even have a closed container anywhere in the passenger compartment of a commercial vehicle!**
- Generally, as you know, it is illegal or, at minimum, an infraction to have an open container in a car's passenger compartment, depending on the circumstances. There are **FOUR** specific statutes that you must know to completely enforce the open container laws in North Carolina.

STATUTE # 1: North Carolina General Statute Chapter 20-138.7 makes it a misdemeanor to:

1. Drive a motor vehicle on a highway or public vehicular area
2. While there is an alcoholic beverage other than in the unopened manufacturer's original container
3. In the passenger area AND
4. While the driver is consuming alcohol or while alcohol remains in the driver's body.

COMMENT ON STATUTE # 1:

A person drives a car when he is in actual physical control of a vehicle that is in motion OR has the motor running, even if not moving. Public vehicular areas are areas open to the motoring public, such as mall, school or church parking lots.

THEY ARE GUILTY: if they drink one beer at a bar, go out and sit in their car in the parking lot, turn on the motor, and their pal sits next to them with an open beer in his hand. This is just one example of a violation of this law; there can be many other ways to violate it, as well.

STATUTE # 2: N.C.G.S. Chapter 18B-401 makes it a misdemeanor to:

1. Transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the unopened manufacturer's original container.
2. It is also a separate crime for the driver to consume a malt beverage or unfortified wine while driving the motor vehicle on a highway or public vehicular area.

COMMENT ON STATUTE # 2:

fortified wine is wine with an alcoholic content of not more than 24% alcohol by volume. Unfortified wine is wine with an alcoholic content produced only by natural fermentation (and the alcoholic content is thus less than fortified wine but more than malt beverage). Malt beverage is a beer, malt liquor, etc., which contains between 0.5% to 6% alcohol by volume.

THEY ARE GUILTY: if they park their motor vehicle on a public street with the motor running, and there is a bottle of rum lying on the back seat and the seal on the bottle has been broken. And obviously, no drinking and driving is allowed under any circumstance. Again, this is just one example of a violation of this law; there can be many other ways to violate it, as well.

STATUTE # 3: N.C.G.S. Chapter 20-138.2C makes it a misdemeanor:

To possess an **unopened** alcoholic beverage in the passenger area of a **commercial vehicle**.

COMMENT ON STATUTE # 3

a commercial vehicle is very difficult to both define and understand but really means tractors and trailers and commercial passenger vehicles. It includes a single vehicle with a Gross Vehicle Weight Ratio of at least 26,001 pounds, as well as all vehicles with a GVWR of at least 26,001 pounds that includes as part of this GVWR a towed vehicle with a GVWR of at least 10,001 pounds. It also includes a vehicle designed to transport 16 or more passengers, regardless of GVWR. Finally, it includes any vehicle transporting hazardous materials that must be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

THEY ARE GUILTY: if they drive a big tractor/trailer meeting the required GVWR on a highway or public vehicular area with an unopened beer on the passenger seat.

STATUTE # 4:

Finally, the newest addition to North Carolina's open container laws became effective on September 1, 2000. That law amended N.C.G.S. Chapter 20-138.7 by adding subsections (a1) (a2) and (a3). [Note: sections (a1) (a2) and (a3) of this statute were scheduled to expire on September 30, 2002. However, they were renewed, are currently valid, but are once again set to expire on September 30, 2006. Stay tuned to Roll Call and we will let you know if they die in three years or are once again resurrected.] This statute makes the following behaviors an infraction:

First, it is an infraction

1. For ANY person to possess
2. An alcoholic beverage
3. Other than in the unopened manufacturer's original container
4. In the passenger area of a motor vehicle
5. While the motor vehicle is on the highway or highway right-of-way.

A second infraction created by this statute is as follows:

1. It is also an infraction to consume
2. An alcoholic beverage
3. In the passenger area of a motor vehicle
4. While the motor vehicle is on the highway or highway right-of-way.

COMMENT ON STATUTE # 4:

the motor vehicle need not be in operation, it is simply an infraction to possess or consume if parked on the highway or right-of-way. This law applies to highways, streets and highway rights-of-way. **It does NOT apply to public vehicular areas.** It applies to both the driver and passenger. A law enforcement officer may issue a citation to either the driver or passenger, whoever is either in possession or whoever is the consumer.

This law does not apply to the following vehicles: buses, taxicabs, etc.; the living areas of a mobile home; or a house trailer.

These two offenses are infractions and are not a moving violation. They are waivable offenses, with court costs set at \$100.00 and the fine at \$10.00.

WHAT OFFICERS SHOULD ADVISE THE GENERAL PUBLIC:

Say something like this: “Do yourself, your family and the motoring public a favor: do not drink and drive. Never ride with any one who does. Make use of a designated driver. If you are transporting an alcoholic beverage in a motor vehicle, please keep it in the original manufacturer’s unopened container while in the passenger area of your car. Better yet, place it in the trunk of your car or bed of your truck. Never transport alcohol that is distilled, fermented or brewed for human consumption in the passenger compartment of a commercial vehicle. Take responsibility for your behavior and keep our roads safe. If you are a drinking driver, every one else on the road is just a target. If you do not drink and drive, and you are on the highways and byways of the Tar Heel State, you are merely a target for those who do.”

SR&S ADVICE TO SUPERVISORS:

There is no substitute for knowing the statutes and understanding what they mean. It seems to us that most open container offense charges occur when the law officer stops the vehicle for some other offense, and then inadvertently discovers a violation of the open container law. So be it – a charge under these circumstances is as good as having probable cause of an open container violation prior to the stop. Read, study and review and then review again. The open container laws are complex, narrowly drawn, hard to remember and easy to forget. Copy the following page and have each officer or deputy on your squad carry it in his or her notebook. It will be easier to find and understand at 0315 hours.

An aside: My uncle was going bald so he had cocker spaniel hormone injections. He’s got a nice head of wavy hair now, but his ears keep flopping in his food. - Ralph

PS And Ralph’s Aunt Mabel won’t let his uncle on the couch any more, either. - Kevin

**SR&S OPEN CONTAINER
QUICK REFERENCE GUIDE**

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- **N.C.G.S. Chapter 18B-401** makes it a misdemeanor to:
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 2. It is also a separate crime for the driver to consume a malt beverage or unfortified wine while driving the motor vehicle on a highway or public vehicular area.

- **N.C.G.S. Chapter 20-138.2C** makes it a misdemeanor to:

To possess an **unopened** alcoholic beverage in the passenger area of a **commercial vehicle**.

- **N.C.G.S. Chapter 20-138.7(a1)** makes the following behavior only an infraction, and not a crime:
 1. For ANY person to possess
 2. An alcoholic beverage
 3. Other than in the unopened manufacturer's original container
 4. In the passenger area of a motor vehicle
 5. While the motor vehicle is on the highway or highway right-of-way.

A second infraction created by this statute is as follows:

 1. It is also unlawful to consume
 2. An alcoholic beverage
 3. In the passenger area of a motor vehicle
 4. While the motor vehicle is on the highway or highway right-of-way.