

**28.11(b) DRIVING A COMMERCIAL MOTOR VEHICLE WHILE [[DRIVER
LICENSE] [DRIVING PRIVILEGE] [CANCELED] [SUSPENDED] [REVOKED]
[DISQUALIFIED]] [UNDER SUSPENSION OR REVOCATION EQUIVALENT
STATUS]**

§ 322.34(7), Fla. Stat.

To prove the crime of Driving a Commercial Motor Vehicle While [[Driver License] [Driving Privilege] [Canceled] [Suspended] [Revoked] [Disqualified]] [Under Suspension or Revocation Equivalent Status], the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) drove a commercial motor vehicle upon a highway in this state.**

Give as applicable.

- 2. At that time,**
 - a. [his] [her] [license] [driving privilege] was [canceled] [suspended] [revoked] [disqualified].**
 - b. [he] [she] was under suspension or revocation equivalent status].**

§ 322.01, Fla. Stat.

To “drive a commercial motor vehicle” means to operate or be in actual physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

“Commercial motor vehicle” means any motor vehicle used on the streets or highways, which:

- a. Has a gross vehicle weight rating of 26,001 pounds or more;**
- b. Is designed to transport more than 15 persons, including the driver;
or**
- c. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, subpart F.**

Some of these terms (such as “vehicle” and “electric bicycle”) have their own statutory definitions, which should be given if necessary.

“Motor vehicle” means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

State v. Tucker, 761 So. 2d 1248 (Fla. 2d DCA 2000).

“Highway” means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of

vehicular traffic. [A privately owned parking lot, that is open to public use by vehicles, is considered to be a highway.]

“Suspension or revocation equivalent status” is a designation by the Florida Department of Highway Safety and Motor Vehicles for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

“Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.

“Revoked” means the privilege to drive a motor vehicle has been terminated.

“Canceled” means that a license has been declared void and terminated.

“Disqualified” means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

The option of “on a motor vehicle” pertains to motor vehicles such as motorcycles and mopeds.

“Actual physical control” of a motor vehicle means the defendant must be physically in [or on] the motor vehicle and have the capability to operate the motor vehicle, regardless of whether [he] [she] is actually operating the motor vehicle at the time.

Lesser Included Offenses

DRIVING A COMMERCIAL MOTOR VEHICLE WHILE [[DRIVER LICENSE] [DRIVING PRIVILEGE] [CANCELED] [SUSPENDED] [REVOKED] [DISQUALIFIED]] [UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS] — 322.34(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
No Valid Commercial Driver License		322.53	28.9(a)
	No Valid Driver License	322.03	28.9
	Driving While License/Driving Privilege Canceled, Suspended, Revoked or While Under Suspension or Revocation Status, With Knowledge	322.34(2)	28.11
	Attempt	777.04(1)	5.1

Comments

Pursuant to § 322.251(1), Fla. Stat., failure to receive the mailed order shall not affect or stay the effective date or term of the cancellation, suspension, or revocation of the defendant's driving privilege.

The crime in § 322.34(7), Fla. Stat., is bumped up from a first degree misdemeanor to a third degree felony if the defendant had a prior conviction for § 322.34(7), Fla. Stat. It is possible that a withhold of adjudication qualifies as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), and § 322.01(11), Fla. Stat., although there was no case law directly on point as of June 2025. However, pursuant to Fla. R. Traf. Ct. 6.560 and *Raulerson*, a withhold of adjudication that was obtained pursuant to § 318.14(10), Fla. Stat., does not qualify as a conviction.

Although there is no caselaw on point, it is possible that the existence of the prior conviction can be proven to the trial judge at sentencing as a recidivist factor and not an element of the crime that must be proven to the jury, based on *State v. Haddix*, 668 So.2d 1064 (Fla. 4th DCA 1996) and because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If a court determines, however, that a jury finding is required, it would be error to inform the jury of prior convictions. Therefore, if the charging document contains an allegation of prior convictions, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of previous convictions would then be determined beyond a reasonable doubt in a bifurcated proceeding. See *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

If any of the exemptions set forth in § 322.53(2), Fla. Stat., may apply, a special instruction will be necessary.

If the State is relying on the "transporting hazardous materials" alternative for the definition of "commercial motor vehicle," a special instruction regarding 49 C.F.R. part 172, subpart F will be necessary.

This instruction was adopted on April 1, 2020 and was amended on October 2, 2020, and on June 27, 2025.