

761—640.4(321A) Security required following accident. Following an accident, security is required pursuant to Iowa Code section 321A.5.

640.4(1) Suspension.

a. If the security requirements of Iowa Code section 321A.5 are not met, the department shall suspend all licenses of the driver and all registrations of the owner.

b. The suspension shall become effective 30 days after a suspension notice is served pursuant to rule 761—615.37(321). The notice shall inform the person of the amount of security required. The duration of the suspension is provided in Iowa Code section 321A.7. When the suspension ends, the department shall issue a suspension termination notice to the person.

640.4(2) Reserved.

640.4(3) Security—amounts and type.

a. The amount of security required of the uninsured driver and owner shall be determined from reports of the drivers involved in the accident, reports of investigating officers and from supplemental information obtained from persons involved in the accident concerning amounts of damage and injury sustained. Form 431020 may be mailed to parties to the accident for supplemental information. The security required shall not be increased after the suspension notice has been served, but may be reduced if evidence of exact costs is submitted to the department. The amount of security shall not exceed the minimum limits of liability for death or injury specified in Iowa Code chapter 321A.

b. The security shall be deposited with the office of driver services at the address in subrule 640.1(3). The department shall issue to the depositor a receipt when the security is received. The depositor shall surrender the receipt when a refund is requested. Security shall be one of the following types:

- (1) Cash.
- (2) Cashier's check, certified check, bank draft, or postal money order payable to: Treasurer, State of Iowa.
- (3) Surety bond issued by a company authorized to transact insurance business in Iowa.

640.4(4) Security disposition.

a. Security is held by the state treasurer and can be released only for payment of a judgment or as otherwise provided in Iowa Code section 321A.10 or by a court "Order for Release of Security," Form 431097, or by "Assignment and Release," Form 433010.

b. The security can be refunded at any time as follows:

- (1) When compliance as provided in 640.4(5) is presented to the office of driver services; or
- (2) When Form 433007, "District Court Affidavit," is completed by the clerk of the district court of the county where the accident occurred, the form indicates that no action has been initiated or judgment rendered, and the form is submitted to the office of driver services.

640.4(5) Exceptions to requirement of security. Compliance can be shown as follows: general releases, agreement releases, confession of judgment, accord and satisfaction, covenant not to sue, no-fault or no reasonable possibility of judgment, adjudication nonliability, and bankruptcy.

a. General release. Form 431036, "General Release," may be obtained from the office of driver services at the address in subrule 640.1(3). The signature of the party giving the release shall be notarized or witnessed by a disinterested person. The release shall be accompanied by a power of attorney or subrogation authority if signed by a person other than the party sustaining damage or injury.

b. Agreement release. Form 181301, "Agreement Release," may be obtained from the office of driver services at the address in subrule 640.1(3). Complete information shall be provided on the form including the total amount of settlement agreed upon by the parties involved and a release of liability upon fulfillment of payments. The signatures of all parties to the agreement shall be notarized. The release shall be accompanied by a power of attorney or subrogation authority if signed by a person other than a party sustaining damage or injury. Compliance shall be credited only to a party who has agreed to make payment and whose signature appears on the agreement release.

c. Confession of judgment. A court certified copy of a confession of judgment including the payment schedule agreed to by the parties is acceptable compliance. No specific form is provided by the office of driver services.

d. Accord and satisfaction. Accord and satisfaction may be shown by documentation that one party to an accident or the party's insurance carrier has accepted liability for the accident and has compensated the other party to the accident for damages and injuries. This documentation does not serve as compliance for a third party.

e. Covenant not to sue. A covenant not to sue can be given to a party to an accident as compliance by another party to the accident when a release would damage any claim against a third party.

f. No-fault or no reasonable possibility of judgment. Security cannot be required of a person if there is no reasonable possibility that judgment could be rendered against such person. Freedom from fault or immunity from judgment is acceptable compliance when presented in the following manner:

- (1) The investigating officer's report of the accident indicates the other driver caused the accident.
- (2) The other driver admits causing the accident.
- (3) Witness statements indicate the other driver caused the accident.
- (4) The other driver is convicted of a violation which caused the accident.

g. Adjudication. Adjudication of nonliability may be shown by a certified copy of a final court judgment that is rendered in a civil damage action resulting from the accident and that relieves the uninsured of any obligation to pay damages.

h. Bankruptcy. Security is not required of a person when all possible claims against the person arising from the accident have been scheduled in the bankruptcy petition. To establish this exception, the person shall submit a copy of the petition for bankruptcy to the office of driver services at the address in subrule 640.1(3).

640.4(6) Owner exceptions—requirements.

a. An owner can be excepted from the security requirements if the vehicle was being used at the time of an accident without the owner's consent. The owner may qualify for this exception if the police report indicates the vehicle was stolen, or if the driver was convicted of operating without the owner's consent. In the absence of such police report or conviction, the owner may furnish a sworn affidavit that the vehicle was operated without permission or the owner may furnish affidavits of witnesses that the driver had been denied use of the vehicle.

b. A person may be exempted from the security requirements applicable to an owner if the motor vehicle had been sold but the title had not been transferred when the accident occurred.

(1) The person who sold the motor vehicle may qualify for this exemption by submitting to the department an "Affidavit of Buyer-Seller," Form 431125. This form must be completed by both the buyer and seller with signatures notarized or attested to by an officer of the department.

(2) A sworn affidavit by the seller and witnesses to the sale that the vehicle had been sold may be furnished in lieu of Form 431125. The affidavit must include a description of the vehicle, the date of the sale, the monetary consideration, facts concerning the assignment of title and delivery of possession, and the names of witnesses to the sale.

c. Ownership transferred by operation of law can be shown by furnishing certified copies of any court order by which ownership of a vehicle was awarded to another party.

This rule is intended to implement Iowa Code sections 321A.4 to 321A.11 and 321A.31.