

**761—640.4(321A) Security required following accident.** Following an accident, security is required pursuant to Iowa Code section 321A.5. For the purposes of determining the 60-day time frame under Iowa Code section 321A.5(1), a “report of a motor vehicle accident” includes a new or amended law enforcement officer accident report submitted to the department under Iowa Code section 321.266(3); a new or amended driver accident report, Form 433002, submitted to the department under Iowa Code section 321.266(2); any supplemental report submitted to the department under Iowa Code section 321.267; proof of transfer of ownership of a vehicle involved in the accident that occurred prior to the date of the accident; proof of identity of a driver incorrectly identified in an initial accident report; or proof of loss submitted by an insurance carrier authorized to transact insurance business in Iowa or its authorized subrogation provider. Nothing in this rule shall be construed to extend the duration of a suspension issued under Iowa Code section 321A.5 beyond the period authorized in Iowa Code section 321A.7.

**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 to the person a notice terminating the suspension.

**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 431074, “Insurance Request Letter,” 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 department at the address in subrule 640.1(3). The department shall issue to the depositor a receipt when the security is received. 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, including by Form 431097, “Order for Release of Security”; or by Form 433010, “Assignment and Release.”

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

(1) When compliance as provided in subrule 640.4(5) is presented to the motor vehicle division at the address in subrule 640.1(3); or

(2) When, after one year has elapsed from the date of the accident, Form 433007, “Affidavit for Reinstatement or Refund of Security,” is completed by the depositor, the form indicates that no action has been initiated or judgment rendered, and the form is submitted to the motor vehicle division. Upon receipt of the form, the motor vehicle division may confirm the facts contained therein with the district court of the county where the accident occurred or any other court of competent jurisdiction.

**640.4(5) Exceptions to requirement of security.** A person who meets the requirements under Iowa Code section 321A.6(1) or 321A.6(2) is exempt from security requirements. A person who qualifies for an exception under Iowa Code section 321A.6(3), 321A.6(4) or 321A.7(3) must submit proof to the department at the address in subrule 640.1(3) showing that the person qualifies for the applicable exception as follows:

a. *General release from liability.* To qualify for this exception, a person shall submit Form 431036, "General Release." 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. If the party giving release is a minor, the release shall be signed by the parent or legal guardian of the minor. The department may accept an equivalent alternative form to prove a person's general release from liability.

b. *Duly acknowledged written agreement release.* To qualify for this exception, a person shall submit Form 181301, "Agreement." 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. If the party giving release is a minor, the release shall be signed by the parent or legal guardian of the minor. This documentation demonstrates compliance only for a party who has agreed to make payment and whose signature appears on the agreement release. The department may accept an equivalent alternative form to prove that a person has executed a duly acknowledged written agreement.

c. *Court-certified confession of judgment.* To qualify for this exception, a person shall submit a court-certified copy of a confession of judgment, which must include the total sum to be paid, the payment schedule agreed to by the parties, the signature of both parties, and proof of loss if the judgment is to be paid to a subrogation authority.

d. *Accord and satisfaction.* To qualify for this exception, a person shall submit 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 demonstrate compliance for a third party.

e. *Covenant not to sue.* To qualify for this exception, a person shall submit documentation of a covenant not to sue that is 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. *Proof of no-fault or no reasonable possibility of judgment.* To qualify for this exception, a person shall submit proof that the person is not at fault for the accident or that there is no reasonable possibility of judgment being rendered against a person in any of the following ways:

- (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 of nonliability.* To qualify for this exception, a person shall submit a certified copy of a final court judgment that is rendered in a civil damage action resulting from the accident and that relieves the person of any obligation to pay damages.

h. *Bankruptcy.* To qualify for this exception, a person shall submit a copy of the decree for bankruptcy showing that all possible claims against the person arising from the accident have been scheduled in the bankruptcy decree.

i. *Owner exception under Iowa Code section 321A.6(3).* To qualify for this exception, a vehicle owner shall submit documentation that the vehicle was being operated at the time of an accident without the owner's permission, express or implied. This exception does not apply to a person who was driving the vehicle at the time of the accident. Acceptable documentation includes the following:

- (1) A police report indicating the vehicle was stolen.
- (2) Proof of the driver's conviction of operating the vehicle without the owner's consent at the time of the accident.
- (3) A sworn affidavit that the vehicle was being operated without permission at the time of the accident.
- (4) A witness affidavit that the driver had been denied use of the vehicle.

j. *Owner exception for vehicle sale.* To qualify for this exception, a vehicle owner shall submit documentation that the vehicle owner had sold the vehicle involved in the accident and the title had been

reassigned to the new owner, but departmental records did not yet show that the title had been transferred when the accident occurred. This exception does not apply to a person who was driving the vehicle at the time of the accident. Acceptable documentation includes the following:

(1) Form 431125, "Affidavit of Seller," completed by both the buyer and seller with signatures notarized or attested to by a member of the department, unless the seller certifies under penalty of perjury that the buyer's signature could not be obtained and provides evidence to the satisfaction of the department that supports this certification.

(2) A sworn affidavit by the seller and witnesses to the sale, if any, that the vehicle had been sold, including 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, if any.

*k. Owner exception for vehicle transfer:* To qualify for this exception, a vehicle owner shall submit certified copies of any court order by which ownership of a vehicle was awarded to another party prior to the date of the accident. This exception does not apply to a person who was driving the vehicle at the time of the accident.

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

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