

	<p align="center">Department of Administration</p> <p align="center">State of Montana</p> <p align="center">Issued by: The Risk Management & Tort Defense Division</p> <p>Subject: Tort Liability (including Auto Insurance). A summary of the state's tort insurance coverages and program requirements.</p>	<p>Number: RMTDINS0708</p>
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I. DESCRIPTION

In accordance with §2-9-201 MCA, the Risk Management & Tort Defense Division administers a comprehensive insurance plan on behalf of state government. In accordance with §2-9-305 MCA, the division defends and indemnifies the state and its employees in any TORT claim for damages arising from the lawful discharge of official duties rendered or which should have been rendered in the course of employment and within the scope of duty. This document is intended to provide an overview of coverage provided under the state self-insurance plan. This document does not amend, alter, or extend coverage provided under the state property/casualty insurance program or statute. Do not attempt to interpret coverages, limits, or exclusions and apply these to state activities without first contacting the division. Specific exclusions, limits, or coverages may apply.

II. DEFINITIONS

Agency means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

Claim means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent act or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his/her employment, under circumstances where the government entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of the state statute and limit of liability contained in §2-9-108, MCA, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

Damages means judgment awards, settlements, penalties and awards of plaintiff's costs.

Division means the Risk Management & Tort Defense Division.

Employee means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting in behalf of the government entity in any official capacity temporarily or permanently with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity.

Mobile equipment means a land vehicle, to include machinery or any apparatus attached thereto, whether or not self-propelled, which is not subject to motor vehicle registration, maintained for use exclusively on premises owned by or rented to the State of Montana including the rights-

off-way, immediately joining such premises, designed for use principally on off-public roads or designed and maintained for the sole purpose of affording mobility to equipment.

Personal Injury means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

Property Damage means any injury or destruction to tangible property including the loss of use thereof, caused by an occurrence for which the state may be held liable.

State means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

Vehicle means a land motor vehicle, semi-trailer, snow plow, or other vehicle designed for travel on public roads, to include any machinery or apparatus attached thereto. It also includes some mobile equipment with the existence of prior written agreements with the Risk Management & Tort Defense Division.

III. TORT LIABILITY - INSURING AGREEMENT

Subject to Montana law, the state self-insurance plan provides the following coverage:

- A. The Risk Management and Tort Defense will bear reasonable costs to investigate and defend the claim, and pay any damages which are determined to be reasonable through settlement or until final judgment shall have been obtained or until all remedies by appeal, writ, or other legal proceedings have been exhausted.
- B. No state employee shall: i) make any hold harmless agreements or voluntarily assume any liability in any situation. ii) Make or contract any settlement of a claim except at his/her own cost and responsibility without the consent of Risk Management and Tort Defense Division.
- C. State agencies shall at all times fully cooperate with the division in any claim and shall attend and assist in the preparation and trial of such claim.
- D. Automatic comprehensive/collision coverage is provided for losses to vehicles leased from the Montana Department of Transportation Motor Pool in Helena provided the use is for less than 30 days and the vehicle is driven within the United States and Canada. Automatic comprehensive/collision coverage is also provided for vehicles leased from private rental car companies for less than 30 days where the lease requires the state to insure. This coverage is

excess of any other insurance that the state is afforded through participation in rental or purchasing agreements. Employees should purchase auto liability and comprehensive/collision coverage from a rental car company if the vehicle will be driven outside the United States or Canada.

- E. Comprehensive/collision coverage for other vehicles owned/leased/rented by the state is provided only if the vehicle is reported to the Risk Management & Tort Defense Division and listed on the state property/casualty insurance information system. Special conditions may apply to vehicles owned by the Department of Transportation Motor Pool in Helena.
- F. Liability coverage is provided for vehicles acquired during the year at no additional cost. Conversely, rebates of premium for vehicles sold, surplus, or disposed of, will not be given.
- G. State employees are encouraged to use state-owned vehicles while enacting state business. State employees who use their personal vehicles for state business must rely on their personal insurance for coverage. State employees who drive personal vehicles for state business are responsible for deductibles and co-insurance payments under their own personal vehicle policy.
- H. Coverage applies to occurrences in the United States, (including its territories and possessions), and Puerto Rico. For coverage outside these territories please contact the Risk Management and Tort Defense Division.

IV. EXCLUSIONS

The state's self-insurance program does not cover:

- A. The conduct upon which a liability claim is based if such conduct constitutes oppression, fraud, malice, or for any other reason does not arise out of the course and scope of the employee's employment as defined in §2-9-305, MCA.
- B. The employee compromised or settled the claim, without the consent of the Risk Management & Tort Defense Division.
- C. The conduct of the employee constitutes a criminal offense as defined in Title 45, Chapters 4 through 7.
- D. The employee failed or refused to cooperate reasonably in the defense of the case.
- E. Liability assumed under contract.
- F. Vehicles or mobile equipment for comprehensive/collision coverage that are not listed on the state property/casualty insurance information system and without approval of the division.

- G. Liability for state employees that use their personal vehicles for state business or lease vehicles for both personal use and state business use.
- H. Any personal injury or property damage to a state employee and his/her property from an uninsured motorist. Damages arising from these claims are usually covered under workers' compensation, auto, health, disability, or other insurance policies.
- I. Physical damage including, but not limited to maintenance, wear and tear, rot, corrosion, rust, decay, or for any other reason associated with prolonged exposure to weather, failure to maintain, or mechanical defect.
- J. Any liability arising from the American's with Disabilities Act (ADA), Human Rights Act, or Government Code of Fair Practices.
- K. Fines, penalties, contempt citations or judgments for delayed conformance to a court's order.
- L. Fines or penalties imposed by federal or other regulatory agencies.
- M. Medical treatment costs for persons in state custody unless treatment is for injury caused by a tort committed by an agency or its staff.
- N. Non-torts that do not meet the definition of 'tort' and claims that the division has historically regarded as 'non-tort' in our administration of the Insurance Fund. A list of these "non-tort" claims includes, but is not limited to, the following:
 - 1. Administrative Procedures. Administrative hearings or other proceedings, including judicial review or appeals of agency administrative orders, hearings or rules.
 - 2. "CERCLA" or "CECRA" Cost-Recovery Claims. Claims/actions brought by the United States Government or under state law, by any other person, for recovery of costs incurred in removing or cleaning-up hazardous substances.

V. PROGRAM REQUIREMENTS

- A. Early contact and investigation can be critical to loss control. State agencies must report any claim involving a fatality or catastrophic loss to the Risk Management & Tort Defense Division in writing within 24 hours. All other claims must be reported as soon as possible, preferably within 5 business days. Claims not reported within a reasonable period of time may not be paid. Please complete the 'Report of Incident' form found on the division's website under 'Claims'. Use telephone or other electronic means for such serious accidents.

- B. Agencies desiring comprehensive/collision coverage on a vehicle must notify the Risk Management & Tort Defense Division in writing or add the vehicle on-line through the state property/casualty insurance information system (PCIIS). Coverage will become effective upon written verification of the request or acceptance of the submission by the division. All other data that pertains to vehicles must be reported on the state property/casualty insurance information system by January 15th of each fiscal year.
- C. If the Risk Management & Tort Defense Division defends or pays damages on a claim, the division has the right to recover costs or damages from any party in connection with the claim.

VI. SPECIAL SERVICES

- A. The Risk Management & Tort Defense Division provides risk management consulting services to state agencies to help them reduce or prevent claims and losses. The division may be able to assist you to formulate a loss control plan.
- B. The Risk Management & Tort Defense Division provides defensive driver training to state agencies to assist state employees to be more safety conscious.
- C. Upon request, the division can provide a summary of agency loss history and loss trends to assist state agencies to identify problematic trends and patterns.
- D. For coverage outside of these territories, for mobile equipment/watercraft, or for coverage for more than 30 days, agencies must request coverage in writing and pay the appropriate premium to the Risk Management & Tort Defense Division. Comprehensive collision coverage for state vehicles not otherwise provided above is offered only upon request from state agencies.

VII. LIMITS

The state self-insurance fund pays up to \$750,000 per claim/\$1,500,000 per occurrence for tort liability claims. For collision claims, the division pays reasonable market value (actual cash value) of the vehicle.

VIII. DEDUCTIBLES

There are no deductibles for liability claims (i.e. personal injury or property damage to third parties). There is a \$250 deductible for comprehensive/collision coverage on state owned or leased vehicles unless the agency has opted for a different deductible or there is a prior written agreement with the Risk Management & Tort Defense Division.

IX. PREMIUMS

Each agency's standard biennial premium is its share of actuarially estimated state tort liability loss expense. Each agency's share is based upon paid losses in relation to total state paid losses. Premiums are payable to the Risk Management & Tort Defense Division.