

# **DEPARTMENT OF ADMINISTRATION**

## **RISK MANAGEMENT PROGRAM**

**Risk Management and Tort Defense Division**  
1625 11<sup>TH</sup> Avenue, Middle Floor  
P.O. Box 200124  
Helena, MT 59620-0124  
PHONE: (406) 444-2421  
FAX:(406) 444-2592

**Revised 9/23/2020**

Dear State Employee:

Welcome to the State of Montana Risk Management Program. This program has been written in accordance with state law and has been implemented on behalf of your department, agency, commission or board, and its employees.

I believe that risk management has an important place in state government. In the past five years, state agencies have spent millions of dollars resolving losses stemming from tort liability, property damage, and other losses. These losses are draining tax dollars from much needed services and programs.

Following the policies and procedures outlined in this document will assure that the activities and actions of state employees are adequately covered by insurance. Additionally, a systematic and organized approach to managing risks will reduce the conditions and practices that contribute to physical or financial loss.

If risk management is to have any priority, state managers and employees must create it. We must be accountable for losses that could have been prevented or controlled but were not. **LOSSES DON'T JUST HAPPEN; THEY ARE CAUSED!**

I personally encourage all employees to become familiar with this document and to comply with the responsibilities as outlined.

**MANAGING THE DAY-TO-DAY RISKS ASSOCIATED WITH THE OPERATION OF STATE GOVERNMENT IS EVERYBODY'S RESPONSIBILITY.**

Sincerely,

Brian Schweitzer  
Governor

# TABLE OF CONTENTS

<u>Chapter</u>	<u>Page</u>
I. PURPOSE & MISSION.....	1
II. DEFINITIONS.....	2
III WHAT IS RISK MANAGEMENT.....	4
IV. LOSS PREVENTION	
TRAINING.....	7
PROPERTY INSPECTIONS.....	7
PROPERTY APPRAISALS .....	7
INFRARED AND ULTRASONIC SURVEYS .....	8
BUILDING PLAN REVIEW.....	9
LOSS MITIGATION EXPENSE PROGRAM .....	9
V. INSURANCE	
INSURANCE PROCUREMENT.....	10
CERTIFICATES OF INSURANCE.....	10
INSURANCE COVERAGE SPECIFICATIONS.....	11
INSURANCE PREMIUM DISCOUNT.....	12
VI. CLAIMS MANAGEMENT	
STATE AGENCIES REPORTING A LOSS.....	13
PUBLIC REPORTING A LOSS.....	15
VII. RISK MANAGEMENT PLAN	
PURPOSE .....	16
AUTHORITY .....	16
APPLICABILITY .....	16
OBJECTIVE .....	16
ORGANIZATION AND RESPONSIBILITIES.....	16
RISK MANAGEMENT AND TORT DEFENSE DIVISION.....	16
DIRECTORS OF PARTICIPATING AGENCIES .....	17
RISK MANAGEMENT REPRESENTATIVES.....	17
RISK MANAGEMENT NETWORK .....	18
INSURANCE, RETENTION, AND CONTRACTUAL TRANSFER.....	18
COMPREHENSIVE INSURANCE PLAN .....	18
RISK RETENTION .....	19
CONTRACTUAL TRANSFER.....	20
STAFF/CONTRACTS/LOANS/ACCOUNTS/RECORDS/ACTUARIAL EVALUATIONS/RATE DEVELOPMENT/INDEMNIFICATION.....	21

# CHAPTER I.

## **PURPOSE & MISSION** **Risk Management and Tort Defense Division**

As a result of actions taken during the 1972 Constitutional Convention, Article II, Section 18 of the Montana Constitution was modified to abolish the State of Montana's immunity from lawsuit. Legislation enacted subsequent to the 1972 Constitutional Convention provided for the establishment of what today is known as the Risk Management and Tort Defense Division.

The Risk Management and Tort Defense Division defends state employees against tort actions and provides risk management and claims administration services, to state participants, in accordance with Title 2, Chapter 9 (Parts 1 through 3), Montana Codes Annotated (MCA).

The division operates on a legislatively appropriated proprietary account with funding derived from charges to state participants for insurance services. The division also receives revenues from investment earnings on the self-insurance fund. Rates for property and casualty protection for all participants are legislatively approved each biennium.

The Tort Claims Act found in Title 2, Chapter 9, (MCA), authorizes the Department of Administration to set up and administer a comprehensive and centrally administered property and casualty insurance plan. This plan includes providing commercial and self-insurance programs for state participants. The act also allows the Department of Administration to accumulate and administer a fund, which is statutorily appropriated for the payment of claims, and to apportion costs to participants.

The **mission** of the Risk Management and Tort Defense Division of the Department of Administration is to provide cost effective and comprehensive insurance coverage and risk management services, and to protect and defend the State of Montana against losses stemming from property and casualty claims.

The **philosophy** of Risk Management and Tort Defense is to investigate, identify, and resolve as quickly as possible, claims and legal cases that have merit. The division prepares the remaining cases for summary judgment or final resolution at trial. In order to accomplish this mission, the division will achieve the following:

- Where feasible, provide cost effective commercial or self-insurance protection to state participants.
- Provide cost effective, quality legal assistance to state defendants through the use of either staff counsel, agency legal services counsel, or contracted counsel.
- Promote the development of risk management principles and techniques through consultation with state participants.
- Seek timely and cost-effective resolution of all property and casualty claims and lawsuits filed against the state.

## CHAPTER II.

### DEFINITIONS

Definitions cited below reference statute, overlying commercial insurance policy language, or are generally accepted insurance definitions. Participants with questions regarding definitions or coverages should contact the Risk Management and Tort Defense Division.

1. **Bodily Injury** §2-9-101, MCA, means bodily injury, sickness, or disease sustained by any person which occurs during the policy period, including death.
2. **Certificate of Insurance** - Proof of insurance.
3. **Claim** §2-9-101, MCA, means any claim against a governmental entity, for monetary 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.
4. **Deductible Reserve** §2-9-202(2), MCA, The Department of Administration is authorized to charge individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the Department of Administration may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves. This reserve will be used to pay claims, which fall under a commercial property insurance deductible.
5. **Employee** §2-9-101, MCA, means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental 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.
6. **Governmental Entity** §2-9-101, MCA, means and includes the state and political subdivisions as herein defined.
7. **Liability** is a legal obligation alleged against the state by a third party. Liability includes the activities of insured state entities and not direct damage to or loss of property owned by the insured entity.
9. **Loss** is defined as any physical or financial loss stemming from auto, aviation, crime, cyber/information security, fine art, general liability, HIPAA, inland marine, professional liability, property, sureties, special events, and other risks which result in bodily injury, legal liability, property damage, and enterprise loss.

10. **Occurrence** refers to personal injury or property damage resulting from a series of acts or omissions. It can mean acting or failing to act within the scope of one's employment. It is also an accident, including continuous or repeated exposure to conditions, which result in bodily injury or property damage, neither expected nor intended from the standpoint of the insured.

Example: A snowplow driver is operating his vehicle too fast and slides out of control while rounding an icy mountain curve. He crashes into oncoming traffic and causes damage to the other vehicle, and bodily injury to its occupants.

11. **Participant** §2-9-101, MCA, means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof. **For purposes of this manual, state is hereinafter referred to as "state", "state participant", or "participant".**

12. **Personal Injury** §2-9-101, MCA, means any injury sustained by any person to include bodily injury, property/monetary damages, and damage to reputation.

13. **Property Damage** means the loss of use of tangible property including personal and real property.

14. **Risk Exposure Data** means the reporting processes participants must use to report insurable items to the Risk Management and Tort Defense Division [https://rmtd.mt.gov/insurance/pciis\\_help](https://rmtd.mt.gov/insurance/pciis_help). Participants are required to report insurable items that they possess upon request each year. Participants are not asked to report property that insurance does not cover.

15. **State** §2-9-101, MCA, means the State of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof. **For purposes of this manual, state is hereinafter referred to as "state", "state participant", or "participant".**

16. **Tort** §2-9-101, MCA means any claim against a governmental entity, for monetary damages only, that any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of liability contained in §2-9-108, MCA, all claims that 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, are considered one claim.

# CHAPTER III.

## WHAT IS RISK MANAGEMENT?

Risk management is a process of identifying, managing, organizing, and controlling resources and activities to minimize the adverse effects of risk.

There are five basic types of risk that state managers, supervisors, and employees should be aware of. These risks are not mutually exclusive and may be interrelated. Many incidents, accidents, and claims involve losses in several risk areas.

1. **Damage to Property.** Accidental loss or damage to state property such as buildings, boilers, vehicles, and heavy machinery.
2. **Liability to Others.** The risk of legal liability to others resulting from a negligent act or omission and resulting in injuries to persons and/or damage to their property or person.
3. **Loss of Income or Increased Costs.** This is a risk that is often overlooked. Many state participants operate revenue-producing facilities. Athletic venues, bookstores, cafeterias, prison industry operations, and state parks are examples. If these facilities are destroyed or damaged there may be a significant loss of income. Increased costs might include the cost of cleaning up or repair, training replacements, overtime, supervision, etc.
4. **Employee Injuries.** Injuries to state and university employees that arise from work-related activities.
5. **Enterprise Risks.** Enterprise Risk Management (ERM) is a new and emerging discipline in risk management that is gradually being assimilated and adopted in the culture of some public and private entities. An enterprise risk is an activity or event that prevents an organization from achieving its objectives. An organization may fail to reach its objectives through failure to manage its finances through economic boom or recession, failure to take advantage of strategic opportunities, damage to its reputation, and unexpected political events either at home or abroad, to name a few. For additional information about ERM, please click [here](#).

Risks typically stem from a variety of causes. (A cause of loss is a situation or condition, which may create a loss.) Examples: **Natural Causes of Loss** - Lightning, flood, windstorm, or weather can create property losses. **Human Causes of Loss** - Theft, arson, negligent acts of omission or commission may result in property losses or legal liability. Failure to establish appropriate **Enterprise Risk Controls** may result in damage to an organization's reputation, loss of business, missed opportunities to achieve strategic objectives, or unauthorized disclosure of private information from a cyber breach.

Losses may be caused by unsafe acts, unsafe conditions, or poor risk controls.

Examples: Unsafe Acts - 1) The improper operation of a snowplow which damages a private vehicle. 2) State workers on a building scaffold have no warning signs and drop an object on an innocent pedestrian.

Unsafe Conditions - 1) Slippery road conditions which result in a car collision. 2) Poor lighting of a stairwell and no handrails causes an injury to a member of the public attending a university play.

**LOSSES DO NOT JUST HAPPEN. THEY ARE CAUSED. SINCE, IN MOST CASES THE CAUSES ARE KNOWN, MANY LOSSES CAN BE PREVENTED.**

The risk management process involves five basic steps:

1. Risk Identification and Analysis: Identifying the services and assets that could cause a loss.
2. Risk Treatment: Examining alternatives to handle the risks by eliminating loss exposures and minimizing effects on your participant before or after a loss occurs, as well as exploring ways to cover a loss financially.

#### **A. LOSS PREVENTION**

- i. Avoidance. Risk may be avoided by refusing to assume it. Obviously, it is not always possible to completely avoid risks, but the possibility should not be overlooked.
- ii. Loss Control and Reduction. When risk cannot be avoided, it often can be reduced and the severity of loss minimized. For example, fire-resistant construction reduces the chances of a fire. Loss Prevention and loss reduction are primary responsibilities of management. These responsibilities cannot be delegated. If loss prevention is to have any priority, state managers must create it. Managers and employees should be accountable for losses, which could have been prevented or controlled, but were not.

#### **B. INSURANCE**

- i. Risk Transfer. If a risk cannot be avoided, it can often be transferred to others. One common way to transfer risk is to buy insurance. In purchasing insurance, the risk of unpredictable loss is relieved by making scheduled premium payments. Another way to transfer risk to third parties is through contractual arrangements.
- ii. Retention. It may be decided to pay for losses out of current operations by self-insuring or retaining them even though other methods of handling the risk are available. For example, the State of Montana currently retains losses

on its state-owned vehicles for collisions rather than purchase commercial insurance. This is done because in some cases retention is more efficient and economical.

### C. CLAIMS MANAGEMENT

Claims Administration. Once a claim occurs it must be reported immediately to assure that it is thoroughly evaluated within statutory deadlines and to minimize the possibility that it may result in costly and protracted litigation.

Litigation Management. Lawsuits must be investigated, evaluated, and resolved as soon as possible consistent with legal and ethical obligations. Lawsuits that have merit are settled expeditiously and the remaining cases are prepared for summary judgment or resolution at trial.

3. Selection: Determining which risk treatment technique or combination of techniques is most appropriate.
4. Implementation: Putting the selected risk management programs in place.
5. Program Evaluation: Monitoring results of risk management programs to make sure they are effective.

### WHY MANAGE RISKS?

The benefits of risk management are many! First and foremost, an effective program of risk management will assure that damages resultant from tort liability, property, business income, and enterprise risks are minimized and that your vital assets, resources, and continuity are protected.

In addition, participants may reduce their liability premiums by lowering their losses. Each participant's premiums are dependent on the number and amount of losses, which are paid out of the self-insurance fund.

Each participant may reduce its risks and lower its insurance premiums through participation in the Risk Management & Tort Defense Division's insurance premium discount programs (please visit the division's website at <https://rmtd.mt.gov/insurance/noticeelectionforms>).

# **CHAPTER IV.**

## **LOSS PREVENTION**

Through effective loss prevention programs, state agencies and universities may reduce the underlying risk factors that often precede claims or losses; thus, saving tax dollars and other resources.

The Risk Management & Tort Defense Division provides consultative services, training, and on-site inspections. If you have questions or need assistance, please contact our loss prevention staff at <https://rmtd.mt.gov/aboutus/organizationstaff> for additional information.

### **TRAINING**

The Risk Management & Tort Defense Division provides training programs designed to assist state agencies to reduce their risks and prevent exposure to claims/losses.

Training services are offered on an open enrollment basis at locations throughout Montana or online via Zoom. These services may also be customized and provided at an agency-specific location upon request.

For additional information, please visit our website at <https://rmtd.mt.gov/training>.

### **PROPERTY INSPECTIONS**

The Risk Management & Tort Defense Division (RMTD) provides inspection services for state buildings and properties to identify hazards or perils that may give rise to property losses. Inspections are conducted by RMTD loss prevention staff and insurance consultants.

Locations are selected quarterly for inspections with priority given to those buildings having high replacement cost values, recent claim histories, unique occupancies, and/or questionable loss management practices. However, any building may be selected at the request of an agency as resources allow.

After completing an inspection RMTD provides a detailed Property Loss Prevention report for each location which identifies hazards and perils and provides recommendations to mitigate potential losses. Recommendations are advisory. Written responses are required from the agency. For additional information, please visit our website at <https://rmtd.mt.gov/safetylosscontrol/propertyinspections>.

### **PROPERTY APPRAISALS**

The Risk Management & Tort Defense Division (RMTD) and consultants conduct appraisals of select buildings to establish accurate estimates of values. Appraisals typically include an estimated value for the structure and the standard contents of a building. Agencies are

responsible to submit values for special contents, fine art, boilers and machinery, and other assets located at a building location in accordance with the instructions provided through the state Property/Casualty Insurance Information System (PCIIS).

RMTD periodically appraises buildings with estimated replacement cost values exceeding \$1,000,000. Buildings with estimated replacement cost values exceeding \$1,000,000 that an agency designates as "historic" through PCIIS are also appraised.

Buildings valued at less than \$1,000,000 may be added to the division's appraisal schedule as resources permit. Agencies are responsible for reviewing and updating values of all assets reported through PCIIS as necessary but no less than once each fiscal year. For additional information, please visit our website at <https://rmtd.mt.gov/safetylosscontrol/propertyappraisals>.

### **INFRARED AND ULTRASONIC SURVEYS**

Infrared thermography through infrared (IR) surveying, coupled with ultrasonic surveys, are an integral part of any preventive maintenance and property loss control program. Utilizing infrared and ultrasonic scanning on a regular basis for electrical and mechanical systems can improve the reliability of these systems and avoid losses.

The Risk Management & Tort Defense (RMTD) Division provides the service of IR and ultrasonic surveys to state owned and insured properties as a means of identifying electrical issues which, if otherwise undetected, could lead to loss. Loss could be through electrically caused fire, damage to equipment or property, unexpected interruption, and other events. Recommendations to mitigate identified concerns are provided.

Surveys are conducted by RMTD loss prevention staff and qualified consultants. Facilities are asked to provide a qualified individual to assist with accessing panels and equipment. Locations are selected with priority given to those having high replacement cost values, recent claim histories, unique occupancies, and/or questionable loss management practices. However, any building may be selected at the request of an agency as resources allow.

After completing a survey RMTD provides a detailed report for each location which identifies hazards and perils and provides recommendations to mitigate potential losses. Recommendations are advisory. Written responses are required from the agency.

RMTD and our consultants can also provide training and consultations to agencies that are developing infrared and/or ultrasonic surveying programs. For additional information, please visit our website at <https://rmtd.mt.gov/safetylosscontrol/infraredsurveys>.

## **BUILDING PLAN REVIEW**

The Risk Management & Tort Defense Division (RMTD) reviews building plans, blueprints, specifications, and other materials related to the construction or renovation of state buildings involving or affecting fire suppression systems.

Reviews are conducted by RMTD staff and contract consultants. These reviews are not intended to address code compliance. Rather, each review is to identify areas where safety engineering features/controls can be incorporated or modified to mitigate loss to the building. Advisory recommendations are provided for the consideration of the building owner and design team. Recommendations are based on best practices and experience with industry losses and claims in similar environments.

If your agency is interested in a building plan review, please provide RMTD loss prevention staff with plans, blueprints, specifications and related materials including fire suppression systems as early in the planning stage as possible. Please complete and include the Plan Review Submission Form when providing material. For additional information, please visit our website at <https://rmtd.mt.gov/safetylosscontrol/buildingplanreview>.

## **LOSS MITIGATION EXPENSE PROGRAM**

The Risk Management & Tort Defense Division (RMTD) offers loss mitigation expense funds to state agencies and universities for projects, equipment, or training that reduce the likelihood of insured auto, aviation, liability, and property claims.

Agencies may apply for funds by completing the Loss Mitigation Expense Program Application found at <https://rmtd.mt.gov/safetylosscontrol/lossmitigationgrants>.

# CHAPTER V.

## INSURANCE

In accordance with §2-9-201, MCA, the Risk Management and Tort Defense Division, Department of Administration is responsible for the procurement and administration of a comprehensive plan of insurance protection for state agencies and state universities. A summary of major self-insured and commercial insurance coverages and procedures is provided on the division's website at <https://rmtd.mt.gov/insurance/propertycasualtyinsurance>. If you have any questions, please contact the Risk Management and Tort Defense Division, Department of Administration.

### 1. INSURANCE PROCUREMENT

- A. The Risk Management and Tort Defense Division will procure insurance that is deemed necessary, prudent, and cost-effective. State agencies should not purchase insurance without contacting the Risk Management and Tort Defense Division first.
- B. Coverages are periodically procured on a competitive bid basis and are subject to change. Risk Management and Tort Defense will update the insurance coverages and apprise state participants as various coverages are procured.
- C. If participants do not have insurance coverage for a specific exposure as indicated at <https://rmtd.mt.gov/insurance> and have exposures which may necessitate insurance coverage, please contact Risk Management and Tort Defense.
- D. Because some coverage is more difficult to obtain than others, please allow 60 days for procurement. Participants who cancel commercial insurance policies prior to policy expiration may be assessed a penalty by the commercial insurer in accordance with policy provisions.

### 2. CERTIFICATES OF INSURANCE

- A. Participants are often requested to furnish proof of insurance for liability or property coverage to satisfy contractors or other parties.
- B. Managers, supervisors, and employees ultimately have responsibility for procuring a **Certificate of Insurance** (<https://rmtd.mt.gov/insurance/certofins1>) when it is required by law or by contract. Most state-owned motor pool vehicles should have an **In Case of Accident Form** in the glove box, which provides proof of insurance. The **In Case of Accident Form** may also be found on the division's website [https://rmtd.mt.gov/Portals/62/insurance/files/in\\_case\\_of\\_accident.pdf](https://rmtd.mt.gov/Portals/62/insurance/files/in_case_of_accident.pdf), however, this form should only be used to collect information at the scene of the accident.

for preparation of the Report of Incident Form.

- C. For leased/loaned or non-motor pool vehicles, the employee or supervisor should procure an **In Case of Accident Form** or assure that one is in the vehicle. **In Case of Accident Forms** for vehicles are available from the Risk Management & Tort Defense Division or may be found at [https://rmtd.mt.gov/Portals/62/insurance/files/in\\_case\\_of\\_accident.pdf](https://rmtd.mt.gov/Portals/62/insurance/files/in_case_of_accident.pdf). All other **Certificates of Insurance** will be issued by Risk Management and Tort Defense Division staff.
- D. **Certificates of Insurance** are not available for activities or insureds that Risk Management and Tort Defense do not insure. Example: State employees using personal vehicles must carry evidence or proof of their own personal vehicle insurance since this insurance coverage is primary.

The process for obtaining **Certificate of Insurance** is as follows:

- 1. **Certificates of Insurance** for those coverages that are commercially insured for the State of Montana may be obtained by completing the electronic Certificate of Insurance Request Form <https://rmtd.mt.gov/insurance/certofins1> at least 30 days prior to when the certificate is needed. The Risk Management and Tort Defense Division will contact the insurance company to arrange for the provision of a certificate.
- 2. **Certificates of Insurance** for all self-insurance coverages insured through the self-insurance fund will be provided upon written request to Risk Management and Tort Defense, Department of Administration by completion of the electronic Certificate of Insurance request form <https://rmtd.mt.gov/insurance/certofins1> and submitting it to the division. Please allow one-week lead-time for the completion of a request.
- 3. Each participant desiring a certificate should be prepared to provide information verbally, electronically, or in writing, as requested on the form. The certificate will be issued, signed, and dated by the risk management staff and returned to the requesting participant within a week.

**3. INSURANCE COVERAGE SPECIFICATIONS**

The policies described in this section cover loss subject to the conditions of coverage, covered locations, causes, activities, deductibles, and limits as indicated:

- A. **Notification:** The affected state participant shall notify Risk Management and Tort Defense, within 5 business days with full information relative to the nature of each accident and claim <https://rmtd.mt.gov/claims>. Any catastrophic property loss or loss involving a fatality or personal injury must be reported to the division within 24 hours. Claims that are not reported within 60 days or thereafter may be denied.

- B. **Assignment:** The interest of the insured shall not be assignable to any other person or entity.
- C. **Defense:** The employee and the participant shall cooperate reasonably in the defense of the case.
- D. **Risk Exposure Data:** The participant must provide annual **Risk Exposure Reporting Forms** as required by Risk Management and Tort Defense and the state's commercial insurers to secure coverage.
- E. **Remittance:** Premium, co-insurance, and deductible notice information will be sent to each state participant. Each participant shall remit billed liability insurance premiums to Risk Management and Tort Defense by September 1st of each fiscal year.
- F. **Renewal:** All self-insurance policies are continuous unless notice is otherwise provided to participants. Self-insurance policies are subject to renewal on a biennial basis. All commercial insurance policies and premiums are subject to renewal or revision annually. Premium notices will be directed to each participant prior to the end of each biennium to assist with budget preparation for the following biennium.
- G. **Territory:** Generally, coverage is provided for the State of Montana and its employees anywhere in the United States of America, its territories or possessions, or Canada. Various specialty policies that the division administers also provide coverage in foreign countries. Please contact the Risk Management & Tort Defense Division with questions.

#### **4. INSURANCE PREMIUM DISCOUNTS**

The benefits of risk management are many! First and foremost, an effective program of risk management will assure that damages resultant from tort liability, property, business income, and enterprise risks are minimized and that your vital assets, resources, and continuity are protected.

Each participant may reduce its risks and lower its insurance premiums through participation in the Risk Management & Tort Defense Division's insurance premium discount programs (please visit the division's website at <https://rmtd.mt.gov/insurance/noticeelectionforms>).

# CHAPTER VI.

## CLAIMS MANAGEMENT

In accordance with §2-9-303, MCA, the Risk Management and Tort Defense Division investigates, evaluates, and resolves property/casualty claims including auto, aviation, property, and tort liability. Settlements, legal fees, and other expenses are paid from the state self-insurance fund. For assistance with a claims question, please contact our claims staff <https://rmtd.mt.gov/aboutus/organizationstaff>.

### 1. STATE AGENCIES REPORTING A LOSS

In accordance with §2-9-303, MCA, the Risk Management & Tort Defense Division (RMTD) may settle any claim for personal injury/property damage on behalf of state agencies. Timely and accurate reporting of claims is critical in order to protect the interests of the state and its employees. Please follow these procedures to report a claim.

For reporting purposes, claims fall into one of four categories:

1. Vehicle - losses arising from the use of state owned, leased, or courtesy vehicles, mobile equipment, and watercraft.
2. Personal Injury - losses to 'non-state parties' arising from personal injury or property damage other than vehicles.
3. Property - losses to state property other than automobile and personal injury arising from perils such as hail, windstorm, earthquake, fire, theft, etc.
4. Cyber/Data Information Security/Other Incident - losses arising from a cyber/data information security/other incident.

After an agency or university has suffered a loss, the employee most familiar with the incident should immediately notify his/her supervisor and complete a Report of Incident form. Citizens or other third parties that incur personal injuries or property damage as a result of the state's negligence, should be told by the involved state employee they may file a claim with Risk Management and Tort Defense by following procedures found at <https://rmtd.mt.gov/claims/publicreportclaims>.

For vehicular accidents, guidelines about what information to collect and what to say and do at the accident scene may be found in the Accident Form located in the vehicle glove box or at <https://rmtd.mt.gov/claims/incaiseaccidentform>. The immediate supervisor or his/her designee must conduct an investigation to determine what happened, why it happened, and how the claim can be prevented from recurring.

Any catastrophic property loss, data incident, or other loss which involves a fatality or bodily injury, should be telephoned to RMTD claims staff at (406)444-2421 by the immediate supervisor or his/her designee as early as possible the day of the incident, or, if after normal business hours (i.e. 8:00 a.m. to 5:00 p.m.), the next day. The 'Report of Incident' form <https://rmtd.mt.gov/claims/reportincidentform> must be signed by the supervisor and submitted to RMTD within 24 hours.

For all other losses, the immediate supervisor or designee must assure that a Report of Incident form is accurately completed, signed, and sent to RMTD within 5 business days. Claims that are not reported within 60 days may be denied.

A Report of Incident form should be initiated even if no injury or property damage resulted from the incident. An incident that occurs today with little consequence for the agency involved, may have serious consequences for others at some future date.

The Report of Incident form must contain only factual information. State personnel who are completing the reports should exercise caution not to place blame on other state employees or admit liability.

Do not furnish information on claims or lawsuits to unauthorized persons other than law enforcement officials. Obtain names and address of witnesses. Refer all other questions to RMTD.

In the event of a claim involving theft of money, securities, or other property, notify the police immediately and call RMTD claims staff as soon as possible.

Copies of the Report of Incident form shall be distributed as follows:

**ORIGINAL**

Risk Management and Tort Defense Division  
1625 11th Avenue  
P.O. Box 200124  
Helena, MT 59620-0124

**COPIES**

Department of Transportation, Organizational Development Bureau for claims involving motor pool vehicles. One copy of each report shall be maintained by the respective agency. If possible, photographs and diagrams of the losses should also be provided.

Contact us. If a loss occurs during normal business hours you may reach any of our staff at their phone extensions <http://rmtd.mt.gov/aboutus/organizationstaff.aspx> or call (406)444-2421. In the event of an emergency after normal business hours, call (406)444-2421 and press the appropriate menu option. Your phone call will then be transferred to a live person or their voice mail.

Follow the instructions at <http://rmtd.mt.gov/claims/agenciesreportclaims.aspx> for filing a claim and send the 'Report of Incident' and other appropriate documentation to our office immediately.

## **2. PUBLIC REPORTING A LOSS**

If the claim involves a broken windshield, please contact the nearest district office of the Montana Department of Transportation for information on how to file a claim.

If the claim involves a foster parent, please contact Foster Parents Professional Claim Reporting Center at 1-800-841-5161.

If the claim involves a volunteer who is injured while participating in a university sponsored activity, please refer to the claim instructions found at <https://rmtd.mt.gov/claims/publicreportclaims>.

# **CHAPTER VII.**

## **STATE OF MONTANA RISK MANAGEMENT PLAN**

- A. PURPOSE:** To establish requirements within the State of Montana for all participants to wherever feasible prevent, reduce, or transfer losses stemming from the state's exposure to property, legal liability, personnel, or revenue losses.
- B. AUTHORITY:** The authority for this program is §2-9-101, MCA through §2-9-305, MCA.
- C. APPLICABILITY:** To all employees of the State of Montana and the Montana University System (i.e. participants).
- D. OBJECTIVE:** Protection and preservation of the state's vital assets and resources. Effective risk management plays a key role in reducing the high costs which the state and its public must bear to pay for losses associated with injury, property loss, legal liability, loss of income/revenue, and enterprise risks.
- E. RISK MANAGEMENT ORGANIZATION AND RESPONSIBILITIES:**
  - 1. RISK MANAGEMENT AND TORT DEFENSE DIVISION:**
    - a. Purchase and administer property/casualty insurance, except employee benefits, on behalf of state agencies.
    - b. Investigate, evaluate, and resolve all meritorious claims at the lowest possible cost to the state consistent with legal and ethical obligations and the need to establish acceptable precedents.
    - c. Allocate costs of commercial and self-insurance protection to state participants.
    - d. Provide direction and guidance to the Risk Management Committee.
    - e. Provide training and/or direct training resources to assist state agencies and universities to mitigate the unexpected and unintended consequences of loss.
    - f. Promote risk awareness to state participants through the distribution of risk and loss prevention materials and provide consultative services and resources.
    - g. Coordinate inspections of participants as necessary and deemed appropriate to maintain the insurability of state assets.

- h. Maintain, compile, and summarize the losses of participants and distribute this information periodically to the State Risk Management Committee. This loss data will help to identify trends and problem areas, which require attention.
- i. Assure that participants investigate all losses as soon as possible. Assure that investigations are thorough enough to identify the root causes of the accident. Work with state participants where feasible to assure that preventative action is taken where feasible to prevent recurrence of the loss.
- j. Inform the Director of the Department of Administration of risk management problems within state government and the status of the risk management program.
- k. Collect risk exposure data and other information from participants in state government to monitor the effectiveness of risk management programs.

2. **DIRECTORS OF PARTICIPATING AGENCIES/INSTITUTIONAL HEADS:** Within his/her area of responsibility each participant director is ultimately responsible for minimizing losses and accidents by encouraging and supporting a program of risk awareness and risk management. To accomplish this, each director shall:

- a. Identify major areas of loss exposure and assure that loss prevention and control is an integral part of operations, employee training, and supervisory accountability. Assure that work areas are observed by supervisors on a regular basis in order to identify unsafe acts or conditions.
- b. Appoint a Risk Management Representative who will participate in the State Risk Management Committee, oversee the reporting of risk exposure data, communicate relevant insurance and loss prevention issues, and be responsible to the director.
- c. Assure that supervisors and employees investigate accidents and losses immediately after occurrence. Assure that investigations are thorough, and that meaningful preventive action is recommended. Take whatever action is necessary to implement the recommendations to include temporary measures to prevent recurrence while more permanent solutions are being considered.

3. **RISK MANAGEMENT REPRESENTATIVES:** A Risk Management representative for each participant will be appointed by the director/university/institutional head. These representatives shall:

- a. Coordinate the dissemination of insurance, loss prevention, and other risk

management information to key personnel within the participant and all associated boards, councils, commissions, etc., under the auspices of the participant for supervisory and reporting purposes.

- b. Regularly attend and participate in the State Risk Management Committee meetings.
- c. Ensure that employees and supervisors report all losses and follow all procedures using approved reporting forms (see Loss Management Section).
- d. Follow-up in a timely manner on recommendations from commercial insurers in order to preserve the insurability of the state's assets.
- e. Assure that risk exposure information is accurate and collected in a timely manner.
- f. Support and encourage loss prevention programs within their respective agency.

4. **RISK MANAGEMENT NETWORK.** The general functions of the committee shall be to:

- a. Make recommendations to the Department of Administration.
- b. Serve in an advisory capacity to resolve problems, which may arise with insurance coverage, loss prevention, or other risk management concerns involving protection of state assets and resources.
- c. Regularly attend and participate in the Risk Management Network Meetings.
- d. Collaborate and share information.

## **F. POLICY - INSURANCE, RETENTION, AND CONTRACTUAL TRANSFER**

### **1. COMPREHENSIVE INSURANCE PLAN**

The Risk Management and Tort Defense Division will procure insurance that is deemed necessary, prudent, and cost-effective. The division will purchase insurance or self-insure when:

- a. Required by law or contract.
- b. The amount of the potential loss is too large to be retained.
- c. Commercial insurance is available on acceptable terms.

- d. Insurance can economically provide ancillary services such as inspection, claims handling, or loss prevention, such as provided by the state's commercial property or self-insurance programs.

Participants will identify loss exposures that they wish to have insured. Upon request, Risk Management and Tort Defense will advise participants as to what risks are insurable.

Risk Management and Tort Defense either independently, or upon request, may approve insurance policy limits and deductible levels. The division is authorized to allocate costs and establish deductible reserves.

Participants should appropriately budget for and anticipate projected insurance needs. The Risk Management and Tort Defense Division will typically purchase insurance coverage for participants, and then include the expense in the participant's budget for the subsequent biennium.

## 2. **RISK RETENTION**

Risk retention is the dollar amount of a loss assumed either by participants or paid out of the self-insurance fund that is not covered by commercial insurance.

Loss exposures that are ideally retained are those that are limited in individual size to an amount clearly within the participant's or self-insurance fund's retention capacity; and are unlikely to occur in larger numbers during a short period of time.

State participants and/or the self-insurance fund will retain loss exposures which do not meet the criteria as described in the previous section. The following guidelines shall apply:

- a. Participants retain loss exposures when the potential exposure is small enough to be absorbed. Example: Comprehensive and collision insurance for state owned automobiles.
- b. Participants retain the deductibles on commercial or self-insurance coverages unless Risk Management and Tort Defense specifically participate in the deductible and a prior written agreement is in existence.

Example: State participants retain the first \$1,000 of each property loss and the division satisfies the rest of the deductible before commercial insurance.

- c. Participants retain uninsurable loss exposures such as damage due to wear and tear, latent defect, inherent vice, rust, rotting, mechanical breakdown, settling, cracking, animals, vermin or rodents, and pollutants.

Example: Water impact damage and wear and tear to a seawall at Flathead Lake.

The purpose of the self-insurance fund is to finance incidental property and loss exposures. It is not meant to remove each participant's duty to prevent and reduce losses, replace equipment, or properly maintain state owned property.

- d. The self-insurance fund **MAY** pay in whole or in part, uninsured or retained losses on behalf of state participants. Consideration shall be given to the following:
  - i. an agreement existed with the agency prior to the loss.
  - ii. the loss was not foreseeable or expected,
  - iii. the participant cannot provide or fulfill a vital service in the absence of indemnification from loss; and
  - iv. the loss retention is within the self-insurance fund's capacity.

### 3. **CONTRACTUAL RISK TRANSFER**

In its contractual relationships with independent contractors, state agencies and universities will contractually transfer liability for services performed under contract,

- a. The state property/casualty insurance plan is intended to provide insurance for the State of Montana, the university system, and their employees and not independent contractors, vendors, or other third parties (i.e. independent contractors, vendors, and third parties shall procure their own insurance).
- b. Participants entering into contracts with third parties shall require the contractor to "hold the state harmless" and to **DEFEND** and **INDEMNIFY** the state.
- c. Participants shall require independent contractors to carry comprehensive general liability insurance coverage.

## **G. STAFF**

The Director of the Department of Administration and the Montana Legislature shall approve staffing levels at a level sufficient for the Risk Management & Tort Defense Division to provide required services to state agencies. Requests for additional employees that are not authorized in the division's current level budget must be approved by the Office of Budget & Program Planning (OBPP) and the legislature in a current or subsequent legislative session.

## **H. CONTRACTS, LOANS, DISBURSEMENTS, AND INVESTMENTS**

- i. The Risk Management & Tort Defense Division may enter into any contract or agreement in accordance with the provisions of the Montana Procurement Act. Contracts shall contain specific provisions regarding the scope of service provided, responsibilities of contractors, compensation, periodic reporting, asset ownership, confidentiality of records, assignability, cancellation, compliance with state and federal laws, and billing.
- ii. All checks or warrants for the payment of money shall be issued in the name of the Risk Management & Tort Defense Division with the approval of the State Treasurer's Office.
- iii. All funds not otherwise utilized by the division shall be invested by the Board of Investments in accordance with policies established and set by the board.

## **I. ACCOUNTS AND RECORDS**

- i. The Risk Management & Tort Defense Division will submit a biennial operating budget.
- ii. The division will establish and maintain separate funds and accounts as may be required by good accounting practices. Books and records shall be open to inspection at all reasonable times.
- iii. The division participates in annual financial and periodic performance audits conducted by the Legislative Audit Division.

## **J. ACTUARIAL EVALUATIONS AND RATE DEVELOPMENT**

- i. An annual actuarial evaluation of the state property/casualty insurance fund will be conducted by a fellow of the American Casualty Actuarial Society who is appropriately qualified to render a credible actuarial opinion.
- ii. Reserves on claims will be periodically updated to reflect the division's best

estimates of claims liabilities. Estimated liabilities will be posted in the state's Comprehensive Annual Financial Report and on SABHRS (Statewide Accounting, Budgeting, and Human Resources System) in accordance with state and federal law and generally accepted accounting principles.

The division establishes insurance rates for each agency during the biennial budget preparation process. Rates are based on each agency's reported assets and historical losses with provisions for catastrophe reserves.

- iii. The division allocates the cost of insurance fairly among state agencies that participate in the state property/casualty insurance program. A fair allocation means that an agency pays its fair share of premium commensurate with loss experience and potential exposure. The billable amount for each participant is included in the respective budget request for appropriation authority from the legislature.

## **K. RESPONSIBILITES FOR FUNDS AND ASSETS**

- i. The Administrator of the Risk Management & Tort Defense Division is responsible to approve disbursements.
- ii. The division's fiscal officer may disburse funds only after administrative approval.
- iii. The Administrator, Chief Defense Counsel, and other such persons as designated by either may have charge of, handle, or have access to the property of the division.

## **L. INDEMNIFICATION**

Any person who at any time shall serve, or shall have served, as a state employee, director, or officer shall be indemnified, held harmless, and defended by the Risk Management & Tort Defense Division against related costs and expenses including, but not limited to, attorney fees, amounts of judgments, and reasonable settlements incurred in connection with the defense of any claim, action, suit or proceeding, in which he, she, or they may be involved by virtue of being or having been an employee, Director, or Officer. Such indemnity shall be invalid with respect to claims or incidents arising from: (1) personal gain, profit, or advantage. 2) dishonest acts, and (3) criminal or intentional acts in violation of a statute or ordinance (2-9-305, MCA).

## **M. GOVERNING STATUTES**

§2-9-101, MCA through §2-9-305, MCA