

**Department of Administration
Risk Management and Tort Defense Division**

Title: Risk Management Program Governance

Policy #: 2.01

Approved: Brett E. Dahl

Effective Date: July 1, 2020

I. Overview

The Risk Management & Tort Defense Division is a division of the Department of Administration organized pursuant to §2-9-101, MCA through §2-9-305, MCA for the purpose of providing insurance protection and legal defense for participating agencies, boards, councils, commissions, and universities.

II. Purpose

The purpose of this policy is to set forth the organization, duties, and responsibilities of the Risk Management & Tort Defense Division, state agencies, state universities and various committees (hereinafter referred to as “participants”).

III. Objective

The Department of Administration is charged with administering a comprehensive and cost-effective insurance plan on behalf of state agencies and universities. The objective of risk management is to prevent and/or mitigate the underlying causal factors and costs associated with insured auto, aviation, general liability, and property losses. Effective risk management plays a vital role in protecting and preserving the state’s vital physical, financial, and human resources.

IV. Program Organization and Responsibilities

Risk Management & Tort Defense Division

The Risk Management and Tort Defense Division is responsible for establishing and maintaining the state Risk Management Program. To this end, the division shall accomplish the following:

- a) Purchase and administer property/casualty insurance, except employee benefits, on behalf of state participants.
- 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) Collect risk exposure data and other information from participants in state government to assure that state and university assets are appropriately insured.
- d) Allocate the costs of commercial and self-insurance protection to state participants.
- e) Provide direction and guidance to the state Risk Management Committee.
- f) Provide training and/or direct training resources to assist participants to mitigate the unexpected and unintended consequences of loss.
- g) Promote risk awareness to state participants through the distribution of risk and loss prevention materials and provide consultative services and resources.
- h) Coordinate inspections of participants' risk exposures and operations as necessary and deemed appropriate to maintain the insurability of state assets.
- i) 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.
- j) 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.
- k) Inform the Director of the Department of Administration of risk management opportunities within state government and the status of the risk management program.

DIRECTORS OF PARTICIPATING AGENCIES/INSTITUTIONAL HEADS: Within his/her area of responsibility each participant director/institutional head 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 to identify unsafe acts or conditions.
- b) Assure that a Risk Management contact: represents the agency/university/institution; participates in the state Risk Management Committee; oversees the reporting of risk exposure data; communicates relevant insurance and loss prevention issues; and is responsible to the director/institutional head.

- 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 recommendations to include temporary measures to prevent recurrence while more permanent solutions are being considered.

RISK MANAGEMENT COMMITTEE: The state Risk Management Committee is established by the Department of Administration to assist state agencies and universities to protect their vital physical, financial, and human resources through risk management programs. The membership shall consist of at least one representative of each state agency/university selected by the agency/university/institutional head and/or the Risk Management & Tort Defense Division. The function, organization, and meeting requirements of the members of the committee are as follows:

- a) Regularly attend and participate in the state Risk Management Committee meetings.
- b) Establish effective loss prevention programs with the support of management and employees.
- c) Make recommendations to management and committees regarding the adoption of risk management policies or practices and, when necessary, administrative, or legal action.
- d) Distribute loss trend data, training notices, and other pertinent information to key personnel to mitigate risk and increase awareness of how losses occur and how they can be prevented.
- e) Assure that risk exposure information is appropriately reported and collected from state agencies, universities, and institutions to maintain and preserve the insurability of assets.
- f) Assist supervisors in determining what measures are needed to prevent a recurrence of an incident and make appropriate recommendations to include temporary measures to prevent recurrence while more permanent solutions are being considered.
- g) Monitor the effectiveness of the risk management program.
- h) Subcommittees consisting of uniform or similar risk management issues shall convene from time to time as requested by the Chairperson.
- i) Committee members shall receive regular training on their duties and other important matters including participation in public meetings.
- j) The risk management committee shall convene at least annually.

RISK MANAGEMENT REPRESENTATIVES: A Risk Management representative for each participant will be selected by the director/university/institutional head and/or the Risk Management & Tort Defense Division. 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, the Risk Management & Tort Defense Division and its consultants, authorities having jurisdiction, and others to preserve the insurability of the state's assets.
- e) Assure that risk exposure information is accurate and reported in a timely manner.
- f) Support and encourage loss prevention programs within their respective entity.
- g) Other duties as identified in this policy under 'Risk Management Committee.'

RISK MANAGEMENT NETWORK: The Risk Management Network is a group of select risk management professionals who are subject matter experts. Network members are selected by the Administrator of the Risk Management & Tort Defense Division. The general functions of the network shall be to:

- a) Make recommendations to the Department of Administration.
- b) Serve in an advisory capacity to address various opportunities, 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.

V. Risk Management & Tort Defense Division 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 participating agencies, boards, councils, commissions, and universities. 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.

VI. Contracts, Loans, Disbursements, and Investments

- a) 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.
- b) The division may obtain general fund loans with approval of the Director of the Department of Administration and the Office of Budget and Program Planning in accordance with state law.
- c) All checks or warrants for the payment of money shall be issued in the name of the Risk Management & Tort Defense Division with the signature of the State Treasurer's Office.
- d) 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.

VII. Accounts and Records

The Risk Management & Tort Defense Division will adopt an annual operating budget for each program developed or adopted by the division.

- a) 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.
- b) The division participates in annual financial and periodic performance audits conducted by the Legislative Audit Division.

VIII. Actuarial Evaluations and Rate Development

- a) 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.
- b) 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 GASB, FASB, and state and federal law.

- c) The division establishes insurance rates for each participant during the biennial budget preparation process. Rates are based on each participant's reported assets and historical losses with provisions for catastrophe reserves.
- d) The division allocates the cost of insurance fairly among participants in the state property/casualty insurance program. A fair allocation means that a participant pays its fair share of premium commensurate with loss experience and potential exposure.

IX. Responsibilities for Funds and Assets

- a) The Administrator of the Risk Management & Tort Defense Division is responsible to approve disbursements.
- b) The division's fiscal officer may disburse funds only after administrative approval.
- c) 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.

X. 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).

XI. Governing Statutes

§2-9-101, MCA through §2-9-305, MCA

XII. Administrative Use

History Log	
Approved Date:	
Effective Date:	July 1, 2020
Change and Review Contact:	Brett Dahl

Review:	Event Review: Any event affecting this policy may initiate a review. Such events may include a change in statute, key staff changes or a request for review or change.
Scheduled Review Date:	Five years from Effective Date
Last Review/Revision:	October 19, 2020
Changes:	Various