

	<p><b>Department of Administration</b></p> <p><b>State of Montana</b></p> <p>Issued by: <b>The Risk Management &amp; Tort Defense Division</b></p> <p><b>Subject: Tort Liability (including Auto Insurance).</b> A summary of the state's tort insurance coverage and program requirements.</p>	<p><b>Number: RMTDINS0708</b></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

***Claim §2-9-101(1) MCA*** 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.

***Division*** means the Risk Management & Tort Defense Division.

***Employee §2-9-101(2) MCA*** 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 does not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity.

***Government Entity §2-9-101(3) MCA*** means the state and political subdivisions.

***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-of-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 §2-9-101(4)** 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.

**Political Subdivision §2-9-101(5)** means any county, city, municipal corporation, school district, special improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement between two or more political subdivisions.

**Property Damage §2-9-101(6)** means any injury or destruction to tangible property, including loss of use of the property, caused by an occurrence for which the state may be held liable.

**State §2-9-101(7)** means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

**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 (Including Auto) 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 evaluate any tort claim and pay 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. Automatic comprehensive/collision coverage is provided for vehicles leased from the Montana Department of Transportation Motor Pool in Helena or private rental car companies provided the use is for less than 30 days and the vehicle is driven within the United States. Comprehensive/collision coverage is also provided for vehicles leased/rented for more than 30 days from the Montana Department of Transportation Motor Pool or private rental car companies provided that the vehicle is driven within the United States and reported to the Risk Management & Tort Defense Division before the use. A nominal premium charge will apply.
- C. State and university employees who lease/rent vehicles from private rental

car companies are encouraged to take advantage of the free vehicle comprehensive/collision coverage that is provided by VISA worldwide for state/university employees who charge their entire travel fare on their state procurement card. Free comprehensive/collision coverage is also offered by Enterprise and Hertz for agencies and universities who lease/rent vehicles from Enterprise or Hertz. For additional information about the free auto coverage, please visit the Risk Management & Tort Defense Division's website at <http://rmtd.mt.gov/insurance/autofreesummary.aspx>.

- D. Employees are reminded NOT to purchase vehicle comprehensive/collision coverage unless it is required by local law in foreign countries.
- E. Employees who are traveling outside of the United States and Canada are required to purchase local vehicle liability insurance.
- F. When employees rent/lease a vehicle they need to make sure that their name, together with the name of their sponsoring agency/university, is listed as the lessor/named insured on the rental agreement.
- 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.

#### **IV. EXCLUSIONS**

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

- 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. Liability assumed under contract. 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. The employee compromised or settled the claim, without the consent of the Risk Management & Tort Defense Division.
- D. The conduct of the employee constitutes a criminal offense as defined in Title 45, Chapters 4 through 7.
- E. The employee failed or refused to cooperate reasonably in the defense of the case.

- 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/university 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 and universities 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 that is not otherwise insured through VISA or rental car companies 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 15<sup>th</sup> of each fiscal year.
- C. If the Risk Management & Tort Defense Division 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 and universities 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 and universities to assist state employees to be more safety conscious.
- C. Upon request, the division can provide a summary of agency/university loss history and loss trends to assist state agencies and universities to identify problematic trends and patterns.

## **VII. LIMITS**

The state self-insurance fund pays up to \$750,000 per claim/\$1,500,000 per occurrence for tort liability claims (§2-9-108, MCA). 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 or university has opted for a different deductible <http://rmtd.mt.gov/insurance/highdeddisc.aspx> or there is a prior written agreement with the Risk Management & Tort Defense Division.

## **IX. PREMIUMS**

Each agency/university's biennial vehicle liability premium is its share of actuarially estimated state tort liability loss expenses in relation to the state's total paid losses. Each agency/university's biennial comprehensive/collision premium is based upon the value of its reported vehicles computed as 1.5% of reported value.