



# Oregon

John A. Kitzhaber, MD, Governor

Department of Administrative Services  
Chief Operating Office  
155 Cottage Street NE, U20  
Salem, OR 97301  
PHONE: 503-378-3104  
FAX: 503-373-7643

February 11, 2015

Senator Steiner Hayward, Co-Chair  
Representative Smith, Co-Chair  
Ways & Means General Government Subcommittee  
900 Court Street NE  
Salem, OR 97301

Dear Senator Steiner Hayward, Representative Smith, and the Ways & Means General Government Subcommittee;

Below, please find follow-up information as requested during the February 10, 2015 subcommittee meeting.

**Senator Whitsett asked that a copy of the Risk Limitation policy be distributed to committee.**

We have attached the Liability Self-Insurance Policy Manual for State Officers, Employees and Agents. The portion of the policy discussed begins on page 6, Section IV: Criminal Tort-equivalent Coverage. To clarify my comments from yesterday, to our knowledge this section of the policy had never been used until last year. Prior to the coverage being extended to any employee, we clarified coverage could be granted for an employee who was a witness in an investigation not just the subject of an investigation. We also added a provision that requires reimbursement of all expenses paid by the state if the employee is convicted of the crime in question or enters into a plea bargain in lieu of conviction.

**Senator Johnson would like to know the rates that DAS uses when an agency divests surplus.**

For gross sale price on personal (non-vehicle or titled) equipment:

Gross Sales Price	Administrative Fee
Up to \$500	100%
Above \$500	\$500 + 50% of amount over \$500 up to a maximum charge of \$2,000 on any single item.

For Vehicle and Titled Equipment:

Vehicles and Titled Equipment	
Up to \$250	100%
Above \$250	\$250 + 25% of amount over \$250 up to a maximum charge of \$2,000 on any single item

In 15 – 17 our proposed rate for vehicles goes to a flat 13% if the item is sold-on-site (agencies location) or flat 17% if it is sold from our location.

February 11, 2015  
Page 2

Sincerely,



Michael Jordan, COO  
DAS Director

CC: Paul Siebert, Legislative Fiscal Office

Attachment



Department of Administrative Services

## POLICY MANUAL

**Issuing Division:** Enterprise Goods and Services, Risk Management

**Subject:** Liability Self-Insurance Policy Manual for State Officers, Employees, and Agents

Number  
125-7-202

Effective Date  
May 23, 2014

Approval

*Danny  
Wanzer*

### I. PURPOSE

For most matters of legal liability, the state is not insured. It is self-insured. Under ORS Chapter 278 and ORS 30.260-300, the state pays its own cost of resolving tort liability claims. State self-insurance pays the state's legal liability for torts and defends against claims that appear false or unfounded. The services described in this policy are provided to state agencies by the Department of Administrative Services, Risk Management and the Department of Justice, Trial Division.

This policy only explains to state agencies, officers, employees, and agents the state's liability coverage we provide to them. It does not define or alter in any way the legal rights of claimants. It does not define or limit in any way the state's rights or defenses in any claim or action at law. In some circumstances we may purchase commercial insurance to supplement, augment, or fulfill this policy. This policy does not affect any insurance policy we may own. Should any provision in this policy be contrary to law, the law prevails. This edition applies to all claims with a date of loss on or after the effective date of this policy. Changes and exceptions to the terms of this policy are issued only by us through written Amendments and Endorsements.

See also: Policy 125-7-201, State Self-insurance Liability Policy for State Agencies;  
Policy 125-7-202, This policy;  
Policy 125-7-203, State Self-insurance Employee Dishonesty Policy;  
Policy 125-7-101, State Self-insurance Property Policy;  
Policy 125-7-301, Aircraft and Pilot Standards; and  
OAR 125-155, Vehicle Use and Access.

### II. DEFINITIONS

Throughout this policy, **you** and **your** refer to Oregon state officers, employees and agents. **We**, **us**, and **our** refer to the Department of Administrative Services, Risk Management. Other terms, as used in this policy manual, have these meanings:

- A. Accident:** A sudden vehicular event allegedly causing unplanned and unexpected damage to property or injury to a specific person or persons.
- B. Agency:** A board, commission, department, division, institution or branch of the State of Oregon. A public corporation is an agency if we have agreed in writing to provide its liability coverage.
- C. Agent:** One who, under an agency's authority, performs a duty or function on an agency's behalf, subject to its direction and control. Direction and control include the method, manner, means, location, and timing of the duty or function. One may

be an agent for some duties or functions and be acting independently for others. Ultimately, a court will look at all relevant facts and circumstances to decide whether someone engaged in a given act is an agent of the state.

Any person or organization with legal capacity to contract could be an agency's agent. An independent contractor is not the state's agent. In response to a tort claim, we will determine for coverage purposes whether the accused was an agent. In response to a tort suit, Department of Justice will make that determination. OAR 125 Chapter 155-101(7) provides that to drive a state vehicle an agent must be appointed in writing. An agency may not refer to someone as an agent for the purpose of granting them state liability coverage or any state privilege or benefit.

- D. *Claim:*** Someone alleges that you, acting in your state job, harmed them by committing a tort or wrong for which you are liable. Claims come to our attention by many methods. You should quickly notify us of any tort claim, even if you believe that it is unfounded. Timely filing of a claim and a timely response can be a key issue in some disputes. A failure to notify us could make you personally liable.
- E. *Criminal complaint*** means a formal charge against you by a grand jury, district attorney or U.S. Attorney alleging violation of a federal or state law, rule or ordinance which may result in imposition of criminal penalties or sanctions; or notice by letter from the U.S. Attorney that you are the target of a federal Grand Jury criminal investigation. This definition only applies to Section IV, Criminal Tort-Equivalent Coverage.
- F. *Criminal investigation*** means a formal investigation in a criminal proceeding under which a subpoena, official letter, or other document requires you personally to appear or furnish information to a grand jury, district attorney or U.S. Attorney.
- G. *Criminal proceeding*** means a criminal complaint against you or a criminal investigation requiring your personal appearance or information.
- H. *Damages:*** Judgment awards, settlements, penalties, and awards of plaintiff's attorney fees or court costs in connection with a tort claim.
- I. *Excess coverage:*** The coverage that applies after primary coverages are exhausted. State liability self-insurance, when it applies to private vehicles under this policy, applies as an excess coverage.
- J. *Primary coverage:*** The insurer who, by law or contract, is responsible to pay first. Typically, for a private vehicle, your own auto liability insurer has promised to provide your primary insurance. When state self-insurance also applies, it pays only covered costs remaining after your primary insurance is exhausted. For a state owned vehicle operated under state direction and control, and in compliance with the State Vehicle Use and Access Rules OAR 125, Division 155, state self-insurance is the primary coverage.
- K. *Private vehicle:*** A motor vehicle that is owned, commercially rented, borrowed, leased, or otherwise lawfully in the possession and control of any private person or any entity other than the state. A commercially rented vehicle is a private vehicle if it is rented or used for private use or any mix of private and state uses. An independent contractor's vehicle being used for contract services is a private vehicle in use on the contractor's business, not on state business. Take note, this

policy provides only limited excess liability coverage of private vehicles and only under strictly defined conditions.

- L. **Qualifying case** means (a) a criminal complaint has been filed against you; (b) you are the target of a federal Grand Jury criminal investigation; or (c) you are a required participant in a criminal investigation. Multiple charges arising out of one event or a continuous or intermittent series of events shall constitute a single occurrence for purposes of coverage under this policy. If you are not eligible for coverage with respect to one charge or allegation arising out of one event or a continuous or intermittent series of events, then you are not entitled to any benefits for any of the charges. This definition only applies to Section IV, Criminal Tort-Equivalent Coverage.
- M. **Review Panel** means a panel consisting of the following: the Attorney General or designee; the Director of Department of Administrative Services or designee; the Administrator of the Department of Administrative Services, Enterprise Goods and Services or designee; the Director or designee of the agency employing the individual seeking coverage under this policy; and any others as determined by Risk Management or mutually agreed upon by the panel. To the extent possible, the panel may consider the inclusion of a peer of the individual named in a criminal proceeding. This definition only applies to Section IV, Criminal Tort-Equivalent Coverage.
- N. **State business (or official state business or state duties):** Any activity directed and controlled by a state agency to advance the lawful policies and purposes of the agency. Note that state law requires a narrow interpretation of state business when it involves any use of vehicles. Coverages under this policy require that you were acting in the scope of your employment or duties. Essentially that means you were engaged in state business at the direction and control of your agency. To determine that, we may look at your position description, your agency's enabling statutes, and other helpful sources.
- O. **State directives:** The state's explicit communications of its administrative and operational directions and controls for your employment. These include the state's laws and administrative rules. They include state policies (like this one). They include written and oral instructions of your agency or supervisors.
- P. **State vehicle:** A motor vehicle owned, commercially rented, borrowed, leased, or otherwise under the possession and control of the state. A commercially rented vehicle is a state vehicle if it is rented and used by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of this policy. A state vehicle used for any purpose other than official state business is used unlawfully and at the personal liability of the driver.
- Q. **Tort:** The breach of a legal duty that is imposed by statutory law or case law, not a duty arising from contract or quasi-contract. The breach must result in injury to a specific person or persons. The law must provide a civil right of action to remedy the breach, an action for damages or for a protective remedy. Torts may be wrongful acts or omissions.

**R. *Volunteer:*** An unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed to do state business under agency direction and control. They receive no remuneration. In this policy, *volunteer* and *agent* may be used interchangeably unless the context requires otherwise. See further definition of *agent*.

### III. GENERAL TORT LIABILITY

#### A. Coverage.

1. **Tort Liability Coverage:** Subject to the provisions of this policy, of ORS 30.260-30.300, and of ORS Chapter 278, we will pay and defend claims against you for torts which you are alleged to have committed, while acting within the scope of your employment or duties.

**B. Exclusions.** *Except as expressly provided in this policy, we do not pay for any of the following:*

1. **Criminal defense, investigation, fines, or penalties.** With the exception of the coverage provided in Section IV. Criminal Tort Equivalent Coverage, we do not pay for your defense against criminal complaints or your legal expenses for criminal investigations. We do not pay fines or penalties in any criminal complaints. We do not pay traffic or parking citations. We do not post or pay bail or appearance bonds.
2. **Claims or actions the state brings against you.** Should a state agency file any kind of claim or legal action against you, we will not pay your losses, costs, or defense.
3. **Claims arising from your private acts or omissions.** The state covers only claims which arise in the scope or performance of your state duties under the direction and control of the state. Scope and performance of duty are matters of fact, in the light of all related circumstances. Among other things, we will consider: (i) the duties actually assigned to you to do, (ii) whether what you did was done under your or your employer's direction and control, and (iii) whether your actions were consistent with or contrary to any state directives. Acting in clear and direct violation of state directives would normally exclude you from the coverages provided in this policy.
4. **Extreme or intentional wrongdoing.** We do not pay for defense or damages if the alleged wrong amounts to malfeasance in office or to willful or wanton neglect of duty. We do not cover acts committed maliciously, with intent to cause unlawful damage or injury, or with gross recklessness. The wrongdoing described in this exclusion would be in clear and direct violation of state directives and will exclude you from the coverages provided in this policy.

**NOTE:** The two preceding exclusions are matters of law. If a suit is filed against you, the Department of Justice decides whether you qualify for state coverage under the applicable statutes after consulting with us. The law does not allow your rights to be prejudiced by a state decision not to defend you. Also, you may prove in court that your coverage was wrongly withheld. If so,

the court will direct us to pay any damages that should have been covered and to reimburse your reasonable costs of defense.

5. **Loss to your property.** Actually, our property policy provides that your agency can agree to be liable for your property if it needs to, in the public interest. Your agency has to agree to be responsible in writing prior to the loss. Private vehicles may not be covered. The covered property must comply with the terms and conditions of the Property Self-Insurance Policy Manual 125-7-101.
6. **Loss to state property.** By indemnifying you against tort claims, the state does not cover you or hold you harmless for loss or physical damage you wrongfully cause to its own property. For example, like anyone else, if you wrongfully wreck a state car, we or the agency that owned it may pursue recovery from you for the physical damage to the state car. Agencies may only pursue recovery of the deductible on property covered under the Property Self-Insurance Policy Manual 125-7-101.

In deciding whether we must seek recovery from you, we evaluate the circumstances. We do not seek recovery from you if you meet these three tests:

- a) You were acting in the course and performance of your state duties.
  - b) You were attempting in good faith to conform to any applicable state directives.
  - c) You were just negligent; not reckless, malfeasant, grossly negligent, or criminal.
7. **Costs you are not obligated to pay.** We do not pay anything which you would not be obligated to pay on your own. We do not pay anything which some other party is obligated to pay for you. This means we do not pay losses or costs which you are entitled to collect from your personal auto insurance or any other primary or valid and collectible insurance.
  8. **Anything covered by Workers' Compensation.** We provide workers' compensation insurance through SAIF Corporation. They manage all covered state workers' compensation claims. Those claims are not paid under this policy.
  9. **Any costs arising out of allegations of state ethics violations.** By law, ORS Chapter 244, Government Ethics for Public Officers and Employees, neither we nor your agency may pay any of your defense or penalties for ethics charges.
  10. **Any of your costs, defense, or damages if you fail to cooperate or act to prejudice the state's defense.** We will withdraw state coverage from you if you do not properly assist us and the Department of Justice on any claim in which you are involved.
  11. **Any costs related to trade or professional license defense.** However, your agency may have authority to use its internal resources to defend your license relative to your performance of state duties. Agencies may not pay or reimburse external costs to defend you from fines, sanctions, suspension, revocation, or other actions against your license.

12. **Repayment of a payment or transfer of state funds or property which you made in violation of the law.** Technically, you are strictly liable for all state assets in your control or care, without regard to negligence or wrongdoing. As a matter of practice, we do not apply the strict liability rule of law. We weigh the wrongful payment or transfer against these coverage exclusions. If the circumstances show the payment or transfer was not excluded from coverage, your defense may be covered under this policy. Any repayment of wrongfully paid or transferred funds or property is not covered.

13. **See also: B. Exclusions in Part V, Vehicle Liability.**

**C. Limits of Coverage.**

1. **Tort Liability:** Unlike insurance, state liability coverage is not for specified dollar limits. As long as you and the claim remain qualified under this policy, we remain obligated to indemnify you under its terms.

**D. Requirements or Conditions of Coverage.** For coverage, you must:

1. **Report any claim to us promptly in writing.** You should contact us as soon as possible, but no later than five working days after you learn of it. If you are served papers for a lawsuit, you should get them to the Department of Justice with a copy to us that day or without any delay. If you delay reporting and defense or payment of the claim is harmed thereby, you may forfeit your coverage.

2. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim.

**E. Deductibles.** There are no deductibles. However, we may require that any primary insurance or other valid and collectible insurance be applied before the state's self-insurance.

**F. Right of Recovery.** To the extent allowed by law, if we defend or pay damages on your behalf, we have the right to any funds you may recover from any party in connection with the claim, including insurers. This right is limited to the extent of our losses and costs.

**G. Fees and Charges.** All our costs are paid by state agencies. Our charges to an agency are based mostly on the losses we attribute to it, its officers, employees, and agents.

**IV. CRIMINAL TORT-EQUIVALENT COVERAGE:**

**A. Coverage.**

1. Within our specified limits of coverage, we may pay your necessary and reasonable legal expenses in a criminal proceeding. The minimum conditions for eligibility of this coverage are that:



- a) At our discretion, and in consultation with the Department of Justice, we find that circumstances are such that, if the criminal complaint had been brought against you as a tort claim under Oregon law, you would qualify in all respects for full indemnification under the tort provisions of this policy; or that a criminal complaint has been filed against you for violation of a Federal statute or rule; or that you have been advised in writing of a criminal investigation requiring your personal appearance or information; and
- b) Your agency Director, the Director of the Department of Administrative Services, or the Governor personally recommends that you receive the benefits of this policy; and
- c) The Review Panel determines and advises us, and we find that coverage of your case is in the best interest of the state and its operations.

Note: Your agency must apply to us for coverage as soon as possible after learning of a criminal proceeding involving you. If this coverage becomes available to you as a result of a collective bargaining agreement that becomes effective after you learn of a criminal proceeding involving you, this coverage may apply to a criminal proceeding involving you within 180 days before the effective date of the collective bargaining agreement. You are not covered if you are an independent contractor working for the state under a contract that excludes tort claims coverage by the state, irrespective of whether the exclusion is effective.

For coverage to apply, the agency must have standing operating procedures in place which describe performance expectations. The agency must document that supervisors and staff have received up to date training regarding operating procedures.

**B. Covered Parties.** You must be a state officer, employee, or agent in the performance of official duties. Unless expressly stated, this coverage is not extended to third parties when Risk Management agrees to cover others under general Tort Liability Policy 125-7-201.

**C. Limits of Coverage:**

1. This coverage applies to represented and non-represented state officers, employees and agents. When such coverage is provided by the applicable collective bargaining agreement, this coverage is primary for collectively bargained similar coverage. This coverage is excess of any other insurance you have for legal advice or availability of free legal advice.
2. Coverage shall not exceed \$35,000 for any alleged felony occurrence or \$15,000 for any alleged misdemeanor occurrence upon which a criminal proceeding is based, as defined at our sole discretion. This is the total amount available for all phases of a covered occurrence

including investigation, trial, appeal and post-conviction and habeas corpus relief proceedings.

**D. Payment of Criminal Tort-Equivalent Coverage Claims.** To the limits we have set for this coverage, we will directly pay the reasonable and necessary legal defense costs incurred on your behalf by you or on your behalf by or through the criminal defense counsel of your choice. Defense counsel must submit a written request for payment to Department of Administrative Services, Risk Management.

**E. Right of Offset for State Obligations:** We may withhold or reduce any payment under this coverage, applying all or part of it to any payments due from you to the state in connection with the qualifying case.

**F. Filing Application for Coverage**

1. Your agency must file an application on your behalf. The agency must notify us in writing that you have been charged or are a required participant in a criminal investigation in a qualifying case and request this coverage. We must receive this notice as soon as possible after the date you are notified of the charges or of the criminal investigation requiring your participation.
2. The notice to us must:
  - a) Describe the incident and conduct that are the basis of the criminal proceeding;
  - b) Confirm that the actions taken and the conduct in question were within the course and scope of your duties;
  - c) Report whether agency policy or procedure applied to the conduct in question and if so, whether the policy or procedure was followed (attach copy of applicable policy and procedure);
  - d) Report whether direction from a supervisor was sought, received and followed. If direction was sought, indicate the name of the supervisor. If direction was not sought, explain why not; and
  - e) Report whether advice of DOJ was sought, received and followed. If advice was sought, indicate the name of the attorney providing the advice.
  - f) Provide training records for supervisors and staff documenting attendance at training in policy and procedure related to the circumstances of this criminal proceeding.
3. You may provide additional information separately if you so choose. Agencies on the Review Panel will protect against the release of the

application and your additional information to the extent allowed by law. You may want to seek legal counsel before responding.

4. The Review Panel will review the criminal complaint or available information regarding the criminal investigation, the application for coverage and any other materials it considers relevant to determine if coverage under this policy is in the best interest of the state and its operations. This determination will be based on consideration of whether:
  - a) Was the employee acting within the course and scope of duties;
  - b) Was the employee, while engaged in the actions or activities that resulted in the criminal proceeding, acting in good faith under the totality of the circumstances. In determining whether the employee was acting in good faith for the purposes of coverage under this policy, the Review Panel may consider factors including, but not limited to, the following:
    - i) Was the employee clearly complying with all applicable agency policies and procedures?
    - ii) Did the employee seek and follow direction from a supervisor? If not, would the circumstances have permitted such consultation?
    - iii) Prior to the incident, did the employee seek out and attend training offered by the agency concerning lawful conduct under the circumstances giving rise to the criminal proceeding?
    - iv) Did the agency seek and follow advice of DOJ? If not sought, would the circumstances have permitted or reasonably necessitated such consultation?
    - v) Under the totality of the circumstances, would a reasonable employee have believed that the conduct was lawful and within the course and scope of duties?
    - vi) Has the employee previously sought coverage under this policy and, if so, to what extent are the circumstances similar?

Whatever determination the Review Panel makes regarding coverage being in the best interests of the state and its operations must be unanimous. Risk Management will determine how best to implement the Panel's decision.

- G. Requesting Review of a Coverage Denial.** In the event the application for coverage is denied in whole or in part, you may ask your agency to request review and reconsideration. Requests shall be submitted to the Administrator of the Department of Administrative Services, Enterprise

Goods and Services or designee. The request shall specifically state what coverage was denied and describe the consequences to the individual if coverage is not provided. Decisions by the administrator are final.

**H. Recovery upon Conviction.** In the event we pay for your expenses under this Section IV and then you are convicted of the crime in question or enter into a plea bargain in lieu of conviction, we will recover all expenses paid under this Section IV. Recovery may be made by offset from employee or contractor compensation or from other amounts otherwise due to be paid to you by the State.

The terms and conditions of this coverage may change without notice. We will provide you with current terms and conditions when we are notified of your claim.

## V. VEHICLE LIABILITY

### A. Coverage.

1. **Basic State Vehicle Liability Coverage.** Subject to the terms and conditions of this policy, ORS 30.260-300, and ORS Chapter 278 we will pay and defend tort claims against you for vehicular injury to people or property while operating a state vehicle within the scope of your state employment or duties.
2. **Uninsured Motorist (UM) Coverage for State Vehicles.** We cover you against uninsured motorist's risks (UM). UM covers the authorized driver and authorized passengers in a state vehicle for bodily injury from an accident. UM applies only to what no other funding source covers. UM applies to the driver only when the driver is an authorized driver under state law or rules and the state vehicle is being used for official state business. UM applies when the other motorist in the accident is uninsured, not just under-insured. The other driver must be equally or more negligent than the state driver. Our current UM limit is \$25,000 per claimant for bodily injury and \$50,000 per accident for all claimants combined. Our UM benefits increase automatically to any larger amounts required by state law.
3. **Personal Injury Protection (PIP) for State Vehicles.** We provide you with personal injury protection (PIP). PIP covers injuries to authorized drivers and passengers entering, within, or alighting from a state vehicle. If applicable, state employees' workers' compensation is primary and PIP is excess coverage. PIP applies to the driver only when the driver is an authorized driver under state law or rules and the state vehicle is being used for official state business. PIP coverages and limits for each covered person increase automatically to any larger amounts required by state law. Our current PIP limits are these:
  - (a) All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the person's injury, but not more than \$15,000 in the aggregate

for all such expenses of the person. Expenses of medical, hospital, dental, surgical, ambulance and prosthetic services shall be presumed to be reasonable and necessary unless the provider is given notice of denial of the charges not more than 60 calendar days after we receive from the provider notice of the claim for the services. At any time during the first 50 calendar days after we receive notice of claim, the provider shall, within 10 business days, answer in writing questions from us regarding the claim. For purposes of determining when the 60-day period provided by this paragraph has elapsed, counting of days shall be suspended if the provider does not supply written answers to us within 10 days and shall not resume until the answers are supplied.

- (b) If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person's disability until the date the person is able to return to the person's usual occupation. This benefit is subject to a maximum payment of \$1,250 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.
- (c) If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonably incurred by the injured person for essential services in lieu of the services the person would have performed without income during the period of the person's disability until the date the person is reasonably able to perform such essential services. This benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.
- (d) All reasonable and necessary funeral expenses incurred within one year after the date of the person's injury, but not more than \$2,500.
- (e) If the injured person is a parent or legal guardian of a minor child and is required to be hospitalized for a minimum of 24 hours, \$15 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or for as long as the person is unable to perform essential services that the person would have performed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$450.

4. **Private Vehicle Coverage.** Our basic state vehicle liability coverage will apply as excess coverage to your private automobile liability insurance only while you use the insured private vehicle solely for duly authorized official state business within state directives. No private vehicle is covered in any way by the state while it is being used for any personal purpose or contrary to state directives.

5. **Order of Coverage.** If any of the following coverages apply to a loss or cost, they apply in this order:

- a) Our workers' compensation coverage;
- b) Any other applicable and collectible insurance;
- c) Our personal injury protection coverage;

- d) Our self-insured vehicle tort liability coverage;
- e) Any collateral benefit, including insurance, gratuitous benefit, government benefit, or any other; then
- f) Our uninsured motorist coverage (pursuant to ORS 278.215).

None of these will pay a cost for which one of the prior coverages is responsible. No one may *double dip*. No one may choose among their coverages. Our PIP and UM do not stack on other PIP or UM coverages. Each dollar paid by another PIP or UM reduces the limits of our PIP or UM coverages.

**B. Vehicle Liability Exclusions.** Except as expressly provided in this policy, we do not pay for any of the following:

1. **Anything excluded in Section III, B.** (general liability exclusions) of this policy.
2. **PIP for injury anyone intentionally causes to himself or herself.**
3. **Your liability arising out of or during any personal use of a state or private vehicle, including any use that is contrary to state directives.** Those directives include the provisions of ORS Chapter 283, OAR 125 Chapter 155, and other specific directives of an agency or your supervisors. While using a state or private vehicle contrary to state directives, the driver shall be deemed in all respects to be driving on personal business; not official state business, and without state permission.
4. **Any other coverage for private vehicles.** Except for the excess vehicle liability coverage described, we do not provide *any* coverage under this policy for any kind of private vehicle (motor vehicle, boat, airplane, or others), regardless of its use, authorization, or contract terms. We do not provide PIP, UM, medical, physical, or property damage, accident or comprehensive coverages. We do not pay your private insurance deductible or rate increases. Your private vehicle insurance is entirely reimbursed as part of state mileage rates pursuant to ORS 292.250. No agency, subject to that statute, may pay you more. No agency that is subject to ORS Chapter 278 may provide any other coverage. You are responsible to insure yourself in any private vehicle you use on state business.

**C. Requirements or Conditions of Coverage.** For coverage, you must:

1. **Promptly report any covered accident to us.** You must do so in writing no later than five working days after an accident. You must report any accident within the next working day if it caused major property damage, serious injury, or death and you may be blamed.
2. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim.
3. **Have private liability insurance for any private vehicle that you use on state business.** That includes all passenger-carrying vehicles, private boats of more than six horsepower, and all powered airplanes and other powered vehicles. You must have normal and reasonable liability insurance or type and

limits as required by law. For a motor vehicle on public roadways, you must carry at least the minimum liability insurance prescribed by law.

4. **Hold a valid license and meet all other requirements of applicable law and rule to lawfully operate the vehicle.**
5. **Comply with Section III, *General Tort Liability* and Section VI, *Claims Under State Coverage*.**

**D. Right of Recovery.** Our right to recovery under Section III, General Tort Liability, also applies to any personal injury protection we may pay. We are entitled to reimbursement from insurers or others under ORS Chapter 742.

**E. Fees and Charges.** All our costs are paid by state agencies. Our charges to an agency are based mostly on the losses we attribute to it, its officers, employees and agents.

**F. Proof of Insurance.**

1. **State Vehicles:** The state's self-insured coverage should be accepted by all jurisdictions in the United States, its possessions and territories, and Canada. State coverage is continuous and fully funded. We issue a Certificate of Self-Insurance for any state vehicle to agencies who own vehicles. A copy of the Certificate of Self-Insurance should be kept in the vehicle.
2. **Foreign Insurance:** We delegate authority to each state agency to buy coverage for any state vehicles in any jurisdiction other than the United States, its possessions and territories, and Canada. Each driver is responsible to assure that he or she has adequate coverage before driving in any country or jurisdiction. Lack of proper coverage in some countries could result in a driver facing criminal fine, imprisonment, and criminal defense costs. We do not cover these. The driver could also be liable to the state for loss due to confiscation of its vehicle.
3. **Private Vehicles:** Drivers are responsible, under ORS Chapter 806 and this policy, to provide proof of legally adequate insurance for any use of any private vehicle in any jurisdiction. See definition of private vehicles. This policy is not proof of insurance for a private vehicle. We provide certificates of self-insurance only for state vehicles (see definitions).

## VI. CLAIMS UNDER STATE COVERAGE

To notify us of a claim, complete and, send us our State Self-Insurance Claim Report form. To access our coverages and the State Self-Insurance Claim Report form, see our Web site at: <http://www.oregon.gov/DAS/Risk/index.shtml>. Or, call us and we will provide you with a form. For motor vehicle accidents, include a copy of the Motor Vehicles Division's (DMV) Traffic Accident and Insurance Report. Be sure, if the DMV report applies, that you also file it with your police or DMV office within 72 hours. If you are a state employee who was injured and sought medical treatment, file a Workers' Compensation Form 801 with your agency. **Do not file Workers'**

**Compensation claims with us.** Also, be sure to make any internal accident and claim reports your agency requires.

**Important Note:** Never let formalities delay your prompt reporting of a severe claim. If our forms are not handy, tell us anyway.

Phone: **(503) 373-RISK**. Voice mail after hours.

FAX: **(503) 373-7337**

E-mail: **risk.management@state.or.us**

If you report a claim to us by voice mail, FAX, or e-mail, we *will* confirm receipt in writing. If you do not receive a written confirmation from us, we did not receive your report.

## VII. DISTRIBUTION

This policy manual and any revisions are posted on our Web site. They may also be published in collections of related rules and policies. Managers should make this policy available to all employees who are interested or who are likely to be exposed to claims. Feel free to make copies and distribute them. However, be sure to also distribute any revisions or amendments.

**HISTORY:** Original version effective January 1, 1996

First revision effective June 20, 2002

Second revision effective May 1, 2005

Third revision effective June 3, 2014

O:\INSR\INS\_SELF\_POLICIES\EMP\_LIAB