

Tort Liability Self-Insurance Program

No:

ORM-01

Effective:

September 30, 2021

Issued By:

1.0 Background

The Risk Management Reserve Fund was codified in 1993 to pay for certain liability claims filed against the state. Since then, the Office of Risk Management has administered the Self-Insured Vehicle Liability Program and the Ohio Judges' Professional Liability Self-Insurance Program. In the FY22-23 budget, code revisions were made to facilitate a broader Self-Insurance Tort Liability Program.

2.0 Purpose and Authority

Pursuant to Sections 9.82 to 9.83 of the Ohio Revised Code, the Department of Administrative Services, General Services Division, Office of Risk Management ("ORM"), administers the state's Tort Liability Self-Insurance Program. The purpose of this administrative policy is to detail the specifics of the Program and does not constitute a policy of insurance.

3.0 Definitions

- 3.1** Agent of the State means a person who: a) has the power to act on behalf of and bind the state by his/her actions; b) the state has the right to control the actions of the person; and c) the actions of the person are directed toward the attainment of an objective sought by the state. Designation as an agent of the state for coverage of non-state personnel will be determined at the time of loss.
- 3.2** Claim means an allegation of injury, damage, or other loss due to the negligence of state employees and agents of the state while conducting state business, or conditions or activities on state property.
- 3.3** Employee has the same definition as Ohio Revised Code §109.36 (A).
- 3.4** State means the state of Ohio, as defined in Ohio Revised Code §109.36 (B). State, for the purposes of coverage under this Program, does not include political subdivisions, state colleges and universities, boards of elections, courts of common pleas, courts of appeals, the Ohio History Connection, or agricultural experimental stations.

- 3.5** Agency means the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, and other instrumentalities of the state. “Agency” does not include political subdivisions, state colleges or universities.
- 3.6** Tort Liability Self-Insurance Program and Program means the authority of the department of administrative services to compromise claims as provided for in Sections 9.82 to 9.83 and Chapter 2743 of the Ohio Revised Code.

4.0 Terms and Conditions

- 4.1 Coverage period:** This Program goes into effect on September 30, 2021.
 - A. Claims reported with an incident/loss date prior to September 30, 2021, will be covered if they are within the statute of limitations and suit has not already been filed.
 - B. Claims with a loss date prior to September 30, 2021, that are covered under commercial insurance will be reported to the carrier by the ORM. If the claim exceeds the commercial policy limit or is denied, the Tort Liability Self-Insurance Program will apply.
- 4.2 Limits of Coverage:** The Program provides a combined single limit of \$2,000,000 per claim, no matter how many state agencies or employees are involved. Also, if there is a commercial insurance policy in effect, the self-insured Program will provide excess coverage and will pay the deductible with no pass-thru to the agency.
- 4.3 Defense Costs and Expenses Erode Limit:** All loss adjustment and legal expenses paid through the Tort Liability Self-Insurance Program are included in the \$2,000,000 per claim limit.
- 4.4 What is covered:** To the extent permitted by Ohio law and except for situations where officer, employee or governmental immunity would apply, the ORM will pay liability claims made against the state.
- 4.5 Claim Files are Not Public Record:** In accordance with Ohio Revised Code § 2743.16 (C): “All summaries, reports, and records received and maintained by the office of risk management in the department of administrative services in connection with claims against the state are not public records, shall be held in confidence, shall not be released, and shall not be subject to discovery or introduction in evidence in any federal or state civil action.”
- 4.6 Jurisdiction:** The Tort Liability Self-Insurance Program provides coverage for judgments or settlements rendered for liability claims in the jurisdiction of the Ohio Court of Claims. Any claims in other jurisdictions shall be the responsibility of the state agency.
- 4.7 Who is an Insured:** All state agencies, boards and commissions in the executive, legislative and judicial branch, per the definition of “State”; all state employees, officers, and officials, per the definition of “Employee”; agents of the state, per the

definition of "Agent of the State" and for whom coverage has been extended by the ORM.

4.8 Severability of interests: Except with respect to the limit of coverage and any rights or duties specifically assigned, this policy applies as if each state entity were the only state entity and separately to each covered party against whom a claim is made or a suit is brought.

4.9 Premium Determination: Pursuant to Ohio Revised Code §9.823, a premium allocation, which may periodically change, will be collected from each participating agency to cover claim payments, loss adjustment expenses and the cost of administration. Annual premiums will be actuarially determined.

4.10 Claim Reporting Requirements: All occurrences on state property or involving state employees or agents of the state who are performing duties for state business at any location should be reported to the Risk Management Portal as soon as practicable upon learning of such an occurrence. The Portal can be accessed from any computer or mobile device by going to the ORM website: <http://DAS.Ohio.gov/riskmanagement>.

4.11 Cooperation with Investigation: In the event of a claim, the state agency, officers, and personnel shall fully cooperate with the ORM, agency legal counsel, and the Attorney General during the claim process. Failure to cooperate may result in a denial of coverage under the self-insured program.

4.12 Coordination with AGO and Right to Sue: ORM staff will investigate and attempt to compromise non-complex claims that have not gone to suit. The ORM will issue a right to sue letter for high value and complex claims; such claims will be handled in coordination with the Attorney General's Office, Court of Claims section and/or agency legal counsel.

4.13 Limitation of Liability: Pursuant to Ohio Revised Code § 2743.01 (D), all recoveries against the state under the Tort Liability Self-Insurance Program shall be reduced by the aggregate proceeds of all collateral sources a claimant is entitled to receive, whether or not the claimant has received them.

4.14 Other Coverage is Primary

- A. If any state agency has valid and collectible insurance for a claim covered under this policy, the coverage provided under this policy shall be excess over any such other coverage, unless the ORM has purchased the coverage specifically to be excess of the coverage provided by this policy.
- B. In the event a claim is caused by a party contracted by the state, that insurance shall be primary. This policy shall be excess and shall not contribute with it.

4.15 No Waiver of Subrogation: There shall be no waiver of subrogation granted in favor of any other party. In the event a state agency has contractually agreed to such a waiver, no coverage shall be afforded under this policy unless the ORM and AGO

approved the waiver prior to the contract inception.

4.16 Additional Insureds: Additional Insured status will not be provided on a blanket basis. Requests for additional insured endorsements must be submitted to the ORM for review prior to the inception of a contract, lease, or other agreement. If an Additional Insured endorsement is issued, the Tort Liability Self-Insurance Program will only apply to claims that are caused by state operations, or the acts, errors or omissions of state employees while performing official duties.

4.17 Ultimate settlement activity and authority lies with ORM.

4.18 Exclusions

- A. Wrongful Imprisonment claims which are covered under Ohio Revised Code § 2743.48.
- B. Claims that are covered by the Victims Compensation Fund.
- C. Class actions.
- D. Contractual liability unless the Agency would otherwise be liable.
- E. Failure to perform, or breach of contractual obligation.
- F. Claimants seeking redress under quasi contractual theories such as unjust enrichment or quantum meruit.
- G. Claims for non-monetary relief including, but not limited to claims for equitable or extraordinary relief.
- H. Claims for punitive or exemplary damages.
- I. Claims for which immunity applies
- J. Inmate property damage claims described in Ohio Revised Code § 2743.02(H).
- K. ODOT pothole claims, unless a third-party claimant has sustained injury, including death.
- L. Other statutory and agency programs with direct settlement authority.
- M. Claims outside of the Jurisdiction.
- N. Damage to or loss of state-owned property, agency internal expenses, including but not limited to, regular and overtime pay, and lost revenue.
- O. Benefits payable under any employee benefit or self-funded insurance plan.
- P. Claims related to employee retirement.
- Q. Anything related to tax collections, tax returns or fees/penalties, loss of tax revenue, bonds, or the use of federal or state funds.
- R. Anything related to financial instruments, including a decline in value or breach or securities laws or regulations.
- S. Damage, destruction, or disappearance of property owned by state employees, unless it was caused by another employee or a condition of the premises.
- T. Anything covered under workers compensation.
- U. Anything covered under employee disability benefits.
- V. Intentional or dishonest acts committed by or at the direction of the state agency; any conduct outside the scope of employment or official duties; or any other circumstance in which an individual would be stripped of immunity under Ohio Revised Code § 9.86. This exclusion does not apply to claims based solely on vicarious liability where the state agency did not authorize, ratify, participate in, or consent to such conduct.
- W. Claims covered under the state Self-Insured Vehicle Liability Program or Self-

- Insured Judicial Liability Program.
- X. Claims between state agencies.

5.0 Endorsements to Broaden Jurisdiction for Certain Agencies

5.1 Endorsement to Remove Jurisdiction Limitation for Designated Agencies

This endorsement removes the restriction of coverage under Section 4.6 Jurisdiction, for the agencies specified that were previously insured under the commercial general liability insurance program. Coverage under this endorsement applies only to general liability claims. All other terms and conditions remain the same.

Designated Agencies

Bureau of Workers Compensation
Capitol Square Review and Advisory Board, including Battery A
Department of Administrative Services
Department of Veterans Services
Supreme Court of Ohio
Department of Commerce
Air Quality Development Authority
Employment Relations Board
Ohio Housing Finance Agency
Office of the Consumer's Counsel
Industrial Commission
Public Defender Commission
The Ohio Senate
Secretary of State
State Cosmetology and Barber Board
Department of Health

5.2 Endorsement to Remove Jurisdiction Limitation for Designated Agencies

This endorsement removes the restriction of coverage under Section 4.6 Jurisdiction for the agencies specified below that previously purchased commercial police professional liability policies. Coverage under this endorsement applies only to claims related to law enforcement activity. All other terms and conditions remain the same.

Designated Agencies

Department of Taxation
Department of Veterans Services
The Ohio Senate
The Ohio House of Representatives

5.3 Endorsement to Remove Jurisdiction Limitation for Designated Agencies

This endorsement removes the restriction of coverage under Section 4.6 Jurisdiction for the agencies specified below that previously purchased commercial public entity liability insurance. Coverage under this endorsement applies only to claims related to Public Official liability and Employment Practices liability. All other terms and conditions remain the same.

Designated Agencies

Ohio Water Development Authority
Ohio Air Quality Development Authority

5.4 Endorsement to Remove Jurisdiction Limitation for Designated Agencies

This endorsement removes the restriction of coverage under Section 4.6 Jurisdiction for the OSD Alice Cogswell Center Daycare, for which a commercial daycare liability insurance was previously purchased. Coverage under this endorsement applies only to general liability claims related to the daycare center building, including parking and play areas designated for the daycare, and professional or general liability claims related to the daycare operations. No other areas of the Ohio State School for the Deaf campus, or operations shall be covered under this endorsement. All other terms and conditions remain the same.

5.5 Endorsement to Remove Jurisdiction Limitation for Designated Agencies

This endorsement removes the restriction of coverage under Section 4.6 Jurisdiction for the Ohio Fire Academy premises and operations that were previously covered under a commercial insurance policy. Coverage under this endorsement applies only to the general and professional liability claims related to the Fire Academy, its campus, training activities on and off the premises and all other operations incidental to the Academy's mission. No other divisions or locations of the Department of Commerce shall be covered under this endorsement. All other terms and conditions remain the same.

5.6 Authority

R.C. 9.82 – 9.83

5.7 Revision History

Date	Description of Change
9/30/2021	Original policy, Pursuant to Sections 9.82 to 9.83

5.8 Inquiries

Direct inquiries about this policy to:

Bobbi Miller or Traci Heyer
Office of Risk Management
General Services Division
Ohio Department of Administrative Services
4200 Surface Road
Columbus, OH 43228

das.riskmanagement@das.ohio.gov

State of Ohio Administrative Policies may be found online at
<https://das.ohio.gov/Divisions/Administrative-Support/State-Administrative-Policy>