

Summary of Statutory Provisions Affecting the Liability of Providers in a Public Health Emergency
Prepared by Texas Department of Health, Office of General Counsel
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Statute/Law	Who is covered?	Immunity from what?	Limitations on or exceptions to immunity?	Comments
Sovereign immunity under U.S. Constitution, 11 th Amendment	State agency or individual sued in official capacity	Immune from liability for damages and/or from lawsuit	Does not apply if sovereign immunity has been waived, e.g., sovereign immunity is waived by Texas Tort Claims Act below	
Official immunity	State or local government employee or official sued in individual capacities	Immune from personal liability for negligence	Applies when employee was performing duty requiring exercise of discretion, acting within scope of authority, and acting in good faith	
Government Code § 421.061, Civil Liability	<ul style="list-style-type: none"> • Officer or employee of state or local agency performing a homeland security activity, or • Volunteer performing homeland security activity at the request or under the direction of an officer or employee of state or local agency 	Considered members of state military forces. Members of such forces are not civilly liable for an act performed in the discharge of duty under Government Code § 431.085	<ul style="list-style-type: none"> • Activity must be under procedures or circumstances described in governor's homeland security strategy • Must be within course and scope of person's authority • Does not apply if willfully or wantonly negligent, conscious indifference, or reckless disregard for safety of others 	<ul style="list-style-type: none"> • Enacted as part of House Bill 9 (Chapter 1312, 78th Leg., 2003) on homeland security passed in 78th session • Under Government Code § 421.062, Liability under Interlocal Contract, state or local agency that furnishes service related to homeland security activity under an interlocal contract is immune from civil liability. Requires the existence of a contract with specific terms and acting in good faith. Protects governmental unit, not employee or officer

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Civil Practice and Remedies Code § 79.003, Disaster Assistance	Person giving care, assistance or advice with respect to the management of an incident: <ul style="list-style-type: none"> • that is a disaster (man-made or natural) and • in which the care, assistance or advice is provided at the request of local, state, or federal agencies 	Immune from civil liability for act or omission	<ul style="list-style-type: none"> • Does not apply to a person who expects or receives compensation from or on behalf of the recipient of the care, assistance, or advice in excess of reimbursement for expenses • Does not apply to reckless conduct or intentional, willful, or wanton misconduct 	Enacted in Senate Bill 513, passed in 78 th session (Chapter 58, 78 th Leg., 2003)
Health and Safety Code § 81.007, Limitation on Liability	Private individual performing duties in compliance with orders or instructions of TDH or a health authority issued under Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81	Not liable for death of or injury to person or for damage to property	<ul style="list-style-type: none"> • Applies to private individual (not defined) • Does not apply to willful misconduct or gross negligence • Applies only to efforts to control communicable diseases 	

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Civil Practice and Remedies Code, Section 74.151, Liability for Emergency Care	Person who in good faith administers emergency care	Not liable in civil damages for act performed during the emergency	<ul style="list-style-type: none"> • Does not apply to willfully or wantonly negligent acts • Does not apply if care was done for or in expectation of remuneration, provided that being legally entitled to remuneration for the care shall not determine whether or not the care was administered for or in anticipation of remuneration • Does not apply to administered by a person who was at the scene because he or a person he represents was an agent soliciting business • Does not apply to a person whose act or omission was a cause of the emergency 	<ul style="list-style-type: none"> • Part of Texas “Good Samaritan” law • Amended by House Bill 4 (Chapter 204, 78th Leg., 2003), § 10.01
Civil Practice and Remedies Code, Section 74.152, Unlicensed Medical Personnel	Person not licensed or certified in the healing arts who in good faith administers emergency care as emergency medical service personnel	Not liable in civil damages for act performed	<ul style="list-style-type: none"> • Does not apply to willfully or wantonly negligent act • Applies only if care administered in good faith • Does not matter whether care is for or in expectation of remuneration 	<ul style="list-style-type: none"> • Part of Texas “Good Samaritan” law • Amended by House Bill 4 (Chapter 204, 78th Leg., 2003), § 10.01

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Title 42 United States Code, Chapter 139, Volunteer Protection, §§ 14501-14505	Volunteer of a nonprofit organization or governmental entity	Not liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity	<ul style="list-style-type: none"> • Volunteer must be acting within scope of responsibilities for organization or entity • If required, volunteer must be properly licensed • Does not protect against willful or criminal misconduct, gross negligence, reckless misconduct, or conscious flagrant indifference to rights or safety of others • Does not protect if volunteer violated federal or state civil rights law • Does not protect the entity using the volunteer • Does not protect volunteer for for-profit entities 	<ul style="list-style-type: none"> • Federal law preempts inconsistent state law unless state law provides additional protection to covered persons • States may elect to opt out of this law. Texas has not done so.

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Civil Practice and Remedies Code, Chapter 84, Charitable Immunity and Liability Act of 1987	Volunteer health care provider who is serving as a direct service volunteer of a charitable organization	Immune from civil liability for any act or omission resulting in death, damage or injury to a patient	<ul style="list-style-type: none"> • Must have acted within scope of duties and within scope of license • Before services, patient or person responsible for patient must sign document acknowledging the voluntary status and immunity from liability except in certain circumstances • Care must be provided without expectation of compensation • Does not apply to act or omission that is intentional, willfully negligent, conscious indifference, or reckless disregard for safety • Does not apply to government entities or employees 	<ul style="list-style-type: none"> • Slightly different immunity granted to volunteer officers, directors or trustees of charitable organization. • Also provides for limit on damages against an employee of a nonhospital charitable organization • Also provides for limit on damages against a nonhospital charitable organization • Also provides for limit on damages against hospital or hospital system • Amended by House Bill 4 (Chapter 204, 78th Leg., 2003), §§ 10.03-10.06 and 18.01-18.03

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<p>Title 42 United States Code, Section 233(p) as found in the Homeland Security Act of 2002, Public Law 107-296, Section 304</p>	<p><i>Covered person</i> includes health care entities; drug and vaccine manufacturers; qualified persons who administer the countermeasure; or officials, agents, or employees of any of these persons. “Qualified” means that the person is authorized under the law of the state to administer the countermeasure.</p>	<ul style="list-style-type: none"> • A <i>covered person</i> shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a <i>covered countermeasure</i> against smallpox to an individual during the effective period of a <i>declaration by the Secretary</i> of the U.S. Department of Health and Human Services. • A <i>covered countermeasure</i> means a substance that is used to prevent or treat smallpox or vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation. The substance must be specified in the declaration. 	<p>The United States has the right to recover (from a covered person) damages that it awarded or paid under this section if the covered person’s conduct was grossly negligent, reckless, illegal, willful misconduct, or a failure of obligation under a contract between the covered person and the United States.</p>	<ul style="list-style-type: none"> • A <i>declaration by the secretary</i> may be issued when “an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.” • The President’s “Declaration Regarding Administration of Smallpox Countermeasures” was published in the Federal Register Jan. 28, 2003 (68 Fed. Reg. 4212).

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Title 42 United States Code § 239 added by Public Law 108-20, Smallpox Emergency Personnel Protection Act of 2003	Person injured, directly or indirectly, by administration of smallpox countermeasures including: <ul style="list-style-type: none"> • Health care worker and emergency responder, or • Individual injured by accidental vaccinia inoculation through contact 	Provides a “no fault” source of benefits and compensation for reasonable and necessary medical treatment reimbursement, certain lost employment income, lump sum death payment, and lost wages death benefit	<ul style="list-style-type: none"> • Coverage is strictly “pre-event” • Coverage is analogous to worker’s compensation, rather than liability coverage 	

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<p>Civil Practice and Remedies Code, Chapter 108, Limitation of Liability for Public Servants</p>	<ul style="list-style-type: none"> • Public official, • State employee or officer, • Physician or psychiatrist who was performing services under a contract with any state agency, • Officer, volunteer, or employee of local government (county, city, district, political subdivision of state), • Physician providing emergency or poststabilization services to patients in local government hospital, or • Employee of municipal hospital management contractor 	<p>Caps personal liability of public servant for damages arising from personal injury, death, or deprivation of right, privilege, or immunity or property damage resulting from act or omission by the public servant</p>	<ul style="list-style-type: none"> • Act or omission must be within course and scope of duties • Limits personal liability of public servant to \$100,000 in damages only if Chapter 104 (see below), Chapter 102 (see below), insurance or coverage by interlocal agreement would apply (and cover that amount) • Does not include contractors or employees of contractors • Does not apply to actions arising under the constitution or laws of the United States 	<ul style="list-style-type: none"> • Provision dovetails with Civil Practice and Remedies Code, Chapters 102 and 104 below that provide for indemnification by state or local government for person's liability • Amended by House Bill 4 (Chapter 204, 78th Leg., 2003), Sections 11.01 and 11.06-11.07 and House Bill 2453 (Chapter 289, 78th Leg., 2003) • Local health authorities are "state officers when performing duties prescribed by state law" under Health and Safety Code, § 121.024; therefore, may be entitled to protections for state officers • Unclear whether law will cover a physician under contract to a local health department (LHD) when LHD is under contract with state

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Civil Practice and Remedies Code, Chapter 104, State Liability for Conduct of Public Servants	<p>Act or omission in the scope of duties on behalf of a state agency by:</p> <ul style="list-style-type: none"> • State employee or officer, or • Physician or psychiatrist who was performing services under a contract with any state agency 	<p>State will indemnify covered person for :</p> <ul style="list-style-type: none"> • Negligence; • Deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States; or • Indemnification in best interests of state as determined by AG 	<ul style="list-style-type: none"> • Provides for indemnification by state (state pays damages awarded against covered person after trial or settlement), rather than for immunity from liability • State indemnifies up to \$100,000 per person or \$300,000 per occurrence • Does not apply to willful or wrongful act or gross negligence • The Attorney General will defend public servant in lawsuit 	<ul style="list-style-type: none"> • Provision dovetails with Civil Practice and Remedies Code, Chapter 108 which caps personal liability at \$100,000 • Amended by House Bill 1297 (Chapter 531, 78th Leg., 2003)
Civil Practice and Remedies Code, Chapter 102, Tort Claims Payments by Local Governments	<ul style="list-style-type: none"> • Officer, volunteer, or employee of local government (county, city, district, political subdivision of state), or • Employee of municipal hospital management contractor 	<p>Local government may pay damages (indemnify) for negligent act or omission in course and scope of employment</p>	<ul style="list-style-type: none"> • Local government may indemnify officers, employees, or volunteers. Important to identify whether local government has actually chosen to indemnify all, some, or none of its employees • Does not cover official misconduct, willful or wrongful act or omission, or gross negligence • Local government may indemnify up to \$100,000 per person or \$300,000 per occurrence 	<ul style="list-style-type: none"> • Provision dovetails with Civil Practice and Remedies Code, Chapter 108 which caps personal liability at \$100,000 • See House Bill 2453 (Chapter 289, 78th Leg., 2003) on municipal hospital management contractor

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<p>Civil Practice and Remedies Code; Chapter 101, Texas Tort Claims Act</p>	<p>Act addresses liability of governmental unit (state or political subdivision or municipal hospital management contractor) for wrongful act or omission or negligence of officer or paid employee (not volunteer or independent contractor) acting within scope of employment for property damage, personal injury, or death caused by motor vehicle or condition or use of tangible or real property</p>	<p>Act provides that filing suit under the Act against a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against any individual employee of the governmental unit regarding the same subject matter</p>	<ul style="list-style-type: none"> • Liability of state or city capped at \$250,000 per person and \$500,000 per occurrence • Liability of other local government capped at \$100,000 per person and \$300,000 per occurrence • Because governmental liability “caps” (amounts government will pay) may be higher than amounts government will pay if individual employees are liable (compare Civil Practice and Remedies Code, Chapters 102 and 104 above), many plaintiffs will elect to sue governmental entity, not the individual. • Governmental unit within public health district is not liable for district personnel or property • A city is liable under Act for governmental functions (health, hospitals, EMS, etc.) but not for proprietary functions (any activity that is abnormally dangerous, etc.) 	<ul style="list-style-type: none"> • Language on irrevocable election by plaintiff was added by House Bill 4 (Chapter 204, 78th Leg., 2003), § 11.05 • See House Bill 2453 (Chapter 289, 78th Leg., 2003) on municipal hospital management contractor

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<p>The Emergency Management Assistance Compact (EMAC) Health and Safety Code §778.001, Article VI</p>	<p>“Officers or employees of a party state rendering aid in another state pursuant to this compact...” A party state is a state, which has ratified EMAC and agreed to lend assistance to another state.</p>	<p>“Tort liability”. Specifically: covered persons “shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid . . . shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.”</p>	<ul style="list-style-type: none"> • Does not cover willful misconduct, gross negligence, or recklessness. • Covers only “officers or employees” not private citizens • Aid must be at the request of the host state government, during declared disaster or during exercises. 	<p>Every state except Hawaii has ratified EMAC</p>

The statutes above are described in summary form with many provisions omitted. The actual statute and relevant case law should always be consulted for application in a particular situation. This document is not meant to substitute for the advice of an attorney.

This chart does not describe all statutes that generally (1) protect a governmental or other entity as opposed to employees, officers, or volunteers or (2) apply to tort liability or medical malpractice. The omission of these statutes does not imply they are unimportant or irrelevant. Consultation with an attorney is appropriate to determine the application of other statutes.