Federal and Indiana Laws Protecting Individuals from Tort Liability

Several laws protect individuals from liability for negligence that results in harm to another. Which laws apply depend on several factors, including:

- Is the individual paid or an uncompensated volunteer?
- For whom does the individual volunteer or work?
- Is the individual a government employee or a volunteer?
- Where (location) is the individual a volunteer or employee?
- What kind of services is the individual providing?
- What are the circumstances of the work or volunteering?
- Has an emergency or disaster been declared?

Below is a table of laws that might apply, depending on the factors set out above. The table includes citations to enable individuals or their attorneys to review the actual laws. This list is not intended to be exhaustive; there may be additional laws that protect specific types of volunteers or apply to specific situations.

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<td>Federal Volunteer Protection Act</td>
<td>42 USC §14501 et seq.</td>
<td>Covers volunteers of nonprofit and governmental entities. Does not protect against harm caused by willful or criminal misconduct, gross negligence¹, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual harmed. (Please refer to law for additional exceptions.)</td>
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¹ Most laws do not protect against “gross negligence” that is the proximate cause of injury. “Gross negligence” is often defined in the specific law. Generally, is it conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.
### LAW | CITATION | COVERAGE
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Public Readiness and Emergency Preparedness (PREP) Act | Part of the Public Health Service Act, 42 USC § 247d-6d | Provides broad and strong protection to individuals and entities that are engaged in activities related to the use of covered pharmaceutical countermeasures. This includes, for example, entities and individuals involved with manufacturing, labeling, distributing, packaging, marketing, selling, purchasing, donating, dispensing, prescribing, administrating, licensing or using of such countermeasures. Requires a PREP Act Declaration from the Secretary of Dept of Health & Human Services.

Currently, there are PREP Act Declarations covering antivirals Tamiflu and Relenza for H1N1, avian flu and other novel influenza strains. There is also a PREP Act Declaration that covers the H1N1 vaccine. To be protected from liability, would need to act consistent with the terms of the PREP Act declaration. PREP Act declarations, and FAQs that explain the PREP Act, can be found at [http://www.hhs.gov/disasters/discussion/planners/prepact/index.html](http://www.hhs.gov/disasters/discussion/planners/prepact/index.html). Protection under a PREP Act declaration pre-empts state law, which means state law cannot provide less protection for entities or individuals covered by a PREP Act declaration. Permits a lawsuit to be filed in the U.S. District Court for the District of Columbia for “willful misconduct,” which the plaintiff must prove by “clear and convincing evidence.”

General governmental immunity | IC § 34-13-3-3 | The state, its political subdivisions and employees acting within the scope of employment are not liable for losses resulting from discretionary duties. Discretionary duties involve a conscious balancing of risks and benefits when debating whether to perform an act and in what particular way. *Adams v. Schneider*, 124 N.E. 718, 720 (Ind. App. 1919). Ministerial duties are performed in a prescribed manner and without regard to the actor’s own judgment. *State Dept. of Mental Health v. Allen*, 427 N.E.2d 2, 4 (Ind. App. 1981).

*Note: Whether a particular act is discretionary is a question for the court.*

Aggregate liability limited; punitive damages prohibited | IC § 34-13-3-4 | Limits the combined aggregate liability of public employees acting within the scope of employment. Prohibits imposition of punitive damages on public employees acting within the scope of employment.

Actions against individual members not authorized | IC § 34-13-3-5 | A member of a board, committee, commission, authority or another instrumentality of a governmental entity may not be held civilly liable for the acts taken by such agencies where the member was acting within the scope of employment.

Immunity of persons rendering CPR | IC § 34-30-12-2 | A person who has completed a training course in cardiopulmonary resuscitation (CPR) and attempts to administer CPR without compensation. Does not protect against gross negligence or willful or wanton misconduct.

Immunity for persons providing services in a disaster | IC § 34-30-13.5-1 to IC § 34-30-13.5-3 | A licensed health care provider – working within their scope of license and at a health care services location provided during a disaster event – under Indiana law or the law of another state for providing emergency care in response to an event that is declared a disaster emergency under IC 10-14-3-12. Does not protect against gross negligence or willful misconduct.

A facility or location providing health care services in response to an event that is declared a disaster emergency is similarly immune.

*Note: It does not matter if the care was provided before or after the declaration.*
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| Immunity of persons rendering emergency first aid - gratuitously rendered emergency care | IC §34-30-12-1 | A person, not a health care provider, who voluntarily renders emergency care without compensation or legal obligation at the scene of an emergency or accident. Does not protect against gross negligence or willful or wanton misconduct.  
  *Note: This statute grants immunity for failure to procure further medical aid.*  
| | | A person, not a licensed physician, who renders emergency care involving the use of an automatic external defibrillator; an individual, corporation or business that is not a health care provider that allows a person to use an automatic external defibrillator in an emergency. Does not protect against gross negligence or willful or wanton misconduct.  
| | | A licensed physician or a national or state approved defibrillator instructor for instructing a person who gratuitously renders emergency care using an automatic external defibrillator. Does not protect against gross negligence or willful or wanton misconduct.  
| Emergency management workers | IC § 10-14-3-15 | Emergency management workers complying with or reasonably attempting to comply with emergency orders, rules, or other ordinances not liable for activities resulting in death, injury, or property damage. Does not protect against willful misconduct, gross negligence, or bad faith.  
| Immunity of hospitals and certain persons providing immunizations | IC § 34-30-12.5-1 to IC § 34-30-12.5-3 | A licensed physician, psychiatric hospital, hospital, health facility nurse licensed under IC 25-23, paramedic, emergency technician, advanced emergency technician, employee of an entity described above, member of the medical staff of an entity described above, an individual authorized by the governing board of an entity described above, or an individual under contract with an entity described above. Applies to the administration of an inoculation or medical countermeasure program that is authorized by the federal government during an actual or potential bioterrorist threat or other public health emergency. Does not protect against gross negligence or willful misconduct.  
| Immunity of persons providing voluntary health care | IC § 34-30-13-1 to IC § 34-30-13-2 | A health care provider licensed under Indiana law for providing health care services or emergency medical direction to a person certified under IC 16-31-3-2. Does not protect against gross negligence or willful misconduct.  
  *Note: Services must be given without compensation and be covered by the health care provider's license.*  
| Ambulance attendants and certified emergency medical technicians not liable for acts or omissions | IC § 16-31-6-1 | A certified emergency medical technician or certified emergency medical technician-basic advanced for providing emergency medical services. Does not protect against negligence or willful misconduct.  
  *Note: If the technician does not incur liability, no other person or agency can incur liability through an agency relationship. (Does not include immunity for negligent driving.)*  
| First responder using defibrillator immune from civil liability | IC § 16-31-6-2 | A certified first responder for the use of an automatic or semiautomatic defibrillator in accord with IC 16-31-2-9. Does not protect against negligence or willful misconduct.  
  *Note: If the responder does not incur liability, no other person or agency incurs liability through an agency relationship.*  

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<td>Act or omission of paramedic or EMT committed in good faith</td>
<td>IC § 16-31-6-3</td>
<td>A paramedic or emergency medical technician-intermediate for providing advanced life support to a trauma victim during an emergency under the written or oral direction of a licensed physician. The authorizing physician, hospital or its officers, members of the staff, nurses or other employees of the hospital or local government unit are similarly immune. Does not protect against negligence or willful misconduct.</td>
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| Out-of-state medical personnel immune from civil liability for acts or omissions | IC § 16-31-6-4 | A paramedic, emergency medical technician-intermediate, emergency medical technician-basic advanced, emergency medical technician or a person with equivalent certification from another state. For providing advanced or basic life support to a trauma victim during a disaster emergency declared under IC 10-14-3-12. Does not protect against gross negligence or willful or intentional misconduct.  

*Note: The hospital, provider organization, governmental entity or employee or other staff of these agencies is also immune from liability.* |
| Emergency choke saving methods: Good faith acts | IC § 16-31-9-4 | A person for removing, assisting in removing or attempting to remove food from another person's throat in an emergency at a food establishment. Does not protect against willful or wanton misconduct. The owner or operator of such establishment is not liable for civil damages if there is an approved placard posted in accordance with IC 16-31-9-2. |

**SUPPORTERS**  
The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

This document was developed by Andy Baker-White, J.D., M.P.H., associate director at the Network's Mid-States Region at the University of Michigan School of Public Health, with assistance from Kim Parks, legal intern at the Mid-States Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.