

## Summary of laws that may protect individuals from tort liability

There are several laws that protect individuals from liability for negligence that may have resulted in harm to another. Which law applies, and the specific terms of the law, depends on several factors:

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

Here is a list of laws that might apply, depending on the factors set out above. Citations have been included to enable individuals or their attorneys to review the actual laws. Mostly, the table below covers protection from liability of individuals and does not address protection from liability of the governmental, private, or nonprofit entities themselves. This list is not intended to be exhaustive: in particular, there may be federal laws that protect from liability for specific types of volunteers, or under specific situations that are not listed.

<b>Law</b>	<b>Citation</b>	<b>Coverage*</b>
Federal Volunteer Act	42 USC Sec. 14501 <i>et seq.</i>	Covers volunteers of nonprofit and governmental entities. Does not protect against harm caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. (Please refer to law for additional exceptions).
Public Readiness and Emergency Preparedness (PREP) Act	Part of the Public Health Service Act, 42 USC Sec. 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.

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\* Note, 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*
		<p>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 <a href="http://www.hhs.gov/disasters/discussion/planners/prepact/index.html">http://www.hhs.gov/disasters/discussion/planners/prepact/index.html</a></p> <p>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.”</p>
Michigan act providing for governmental immunity	MCL 691.1407	Govt employees and volunteers when they are engaged in governmental functions and acting within the scope of their responsibility. Does not cover individuals providing medical care or treatment, with limited exceptions. However, other laws (such as the federal volunteer act, Michigan’s Emergency Management Act, the Public Health Code, or the PREP Act) may provide protection from liability. Does not protect from “gross negligence”.
Michigan act providing immunity from liability	MCL 691.1502	Health professionals who assist to respond to a life threatening emergency in a hospital or other licensed medical care facility, when professional’s duties do not require responding to such emergencies. Does not protect against gross negligence or willful and wanton misconduct.
Michigan Good Samaritan Act	MCL 691.1501	Physicians, physician assistants, RNs, and LPNs who render uncompensated care at the scene of an emergency. Does not protect against gross negligence or willful or wanton misconduct.
Michigan Public Health Code	MCL 333.2228; MCL 333.2465	Representatives of MDCH or local health department (may be paid or unpaid). Does not protect against wanton or willful misconduct.
Michigan Public Health Code	MCL 333.20965	First Responders / EMS Personnel. Does not protect against gross negligence or willful misconduct.
Michigan Public Health Code	MCL 333.9203	Governmental staff and uncompensated volunteers for mass immunization programs that are authorized by MDCH. Does not protect against gross negligence or willful and wanton misconduct.

<b>Law</b>	<b>Citation</b>	<b>Coverage*</b>
Michigan Public Health Code	MCL 333.16277	Uncompensated volunteer health professionals who provide patient nonemergency care through facilities that treat uninsured/underinsured. Does not protect against gross negligence, willful and wanton misconduct, or acts or omissions intended to injure the patient.
Michigan Emergency Management Act	MCL 30.411	Applies only if the Governor has declared a state of disaster or emergency. Covers both governmental and nongovernmental workers, and volunteers who are authorized disaster relief workers. Does not protect against gross negligence.

Disclaimer: This table has been prepared by MDCH's public health legal director for informational purposes only. It is not intended as a legal position or advice from the State of Michigan or the Michigan Department of Community Health. For legal advice, readers should consult with their own counsel.