

Liability of State Government Employees
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ISSUE: What legal provisions exist to protect individuals employed by the state from lawsuits by people physically or financially injured by attempts to respond to an emergency?

ANSWER: Though no one law protects all responders in all circumstances, there are laws that cumulatively and individually provide coverage. They are summarized in a document on the DSHS Public Health Preparedness Legal Resources web page: <http://www.dshs.state.tx.us/comprep/ogc/default.shtm>. Keep in mind:

- This document or others provided to the public are not a substitute for legal advice. The summaries may omit provisions or exceptions that are relevant to your situation. You should consult a lawyer if you have any questions.
- The statutes often have exceptions and may not protect for behavior that is “willful misconduct”, “gross negligence”, “criminal” or violations of civil rights.
- The laws below protect individuals, not governmental or private entities. Laws to protect entities are not covered here.

DISCUSSION:

State Government Employees. State employees are protected under the Texas Tort Claims Act, Civil Practice and Remedies Code, Chapter 101, for acts involving tangible property. The act provides for a defense by the Texas Attorney General and indemnification (state pays the damages for you) up to specified amounts that dovetail with other provisions that cap the amount that can be awarded to plaintiffs. Provisions in state law make it much more likely that the state will be sued instead of the employee (Civil Practice and Remedies Code Chapters 101, 104, 108).

Other provisions protect employees and volunteers engaged in “homeland security activities”. These activities are defined broadly to include a “terrorist attack, natural or man made disaster...or extraordinary law enforcement emergency” (Government Code §§421.061, 421.001). When engaged in these activities, employees are considered to be members of the state military forces for purposes of civil liability.

Unlicensed (in the “healing arts”) state government employees acting as emergency medical service personnel and other state government employees who do not expect remuneration for emergency care may be protected under provisions of the Texas “Good Samaritan” law (Civil Practice and Remedies Code §74.151 - 74.152).