

**SEXUAL VIOLENCE PROTECTIVE ORDERS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill establishes the Sexual Violence Protection Act.

**Highlighted Provisions:**

This bill:

- ▶ creates a sexual violence protective order and an ex parte sexual violence protective order;
- ▶ establishes procedures for the application of certain protective orders, modification of those orders, and enforcement of those orders; and
- ▶ requires that a sexual violence protective order be placed on the statewide warrant system.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-10-208**, as last amended by Laws of Utah 2009, Chapters 292 and 356

ENACTS:

**78B-7-501**, Utah Code Annotated 1953

**78B-7-502**, Utah Code Annotated 1953



- 28 [78B-7-503](#), Utah Code Annotated 1953
- 29 [78B-7-504](#), Utah Code Annotated 1953
- 30 [78B-7-505](#), Utah Code Annotated 1953
- 31 [78B-7-506](#), Utah Code Annotated 1953
- 32 [78B-7-507](#), Utah Code Annotated 1953
- 33 [78B-7-508](#), Utah Code Annotated 1953
- 34 [78B-7-509](#), Utah Code Annotated 1953
- 35 [78B-7-510](#), Utah Code Annotated 1953
- 36 [78B-7-511](#), Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **53-10-208** is amended to read:

40 **53-10-208. Definition -- Offenses included on statewide warrant system --**  
 41 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**  
 42 **control -- Training -- Technical support -- Transaction costs.**

43 (1) "Statewide warrant system" means the portion of the state court computer system  
44 that is accessible by modem from the state mainframe computer and contains:

- 45 (a) records of criminal warrant information; and
- 46 (b) after notice and hearing, records of protective orders issued pursuant to:
  - 47 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; [or]
  - 48 (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[.]; or
  - 49 (iii) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.

50 (2) (a) The division shall include on the statewide warrant system all warrants issued  
51 for felony offenses and class A, B, and C misdemeanor offenses in the state.

52 (b) The division shall include on the statewide warrant system all warrants issued for  
53 failure to appear on a traffic citation as ordered by a magistrate under Subsection [77-7-19\(3\)](#).

54 (c) For each warrant, the division shall indicate whether the magistrate ordered under  
55 Section [77-7-5](#) and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

56 (3) The division is the agency responsible for the statewide warrant system and shall:

- 57 (a) ensure quality control of all warrants of arrest or commitment and protective orders
- 58 contained in the statewide warrant system by conducting regular validation checks with every

59 clerk of a court responsible for entering the information on the system;

60 (b) upon the expiration of the protective orders and in the manner prescribed by the  
61 division, purge information regarding protective orders described in Subsection 53-10-208.1(4)  
62 within 30 days of the time after expiration;

63 (c) establish system procedures and provide training to all criminal justice agencies  
64 having access to information contained on the state warrant system;

65 (d) provide technical support, program development, and systems maintenance for the  
66 operation of the system; and

67 (e) pay data processing and transaction costs for state, county, and city law  
68 enforcement agencies and criminal justice agencies having access to information contained on  
69 the state warrant system.

70 (4) (a) Any data processing or transaction costs not funded by legislative appropriation  
71 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

72 (b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

73 Section 2. Section 78B-7-501 is enacted to read:

74 **Part 5. Sexual Violence Protection Act**

75 **78B-7-501. Title.**

76 This part is known as the "Sexual Violence Protection Act."

77 Section 3. Section 78B-7-502 is enacted to read:

78 **78B-7-502. Definitions.**

79 As used in this chapter:

80 (1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

81 (2) "Court clerk" means a district court clerk.

82 (3) "Dating partner" means the same as that term is defined in Section 78B-7-402.

83 (4) "Ex parte protective order" means an order issued without notice to the respondent  
84 in accordance with this chapter.

85 (5) "Foreign protection order" means the same as that term is defined in Section  
86 78B-7-302.

87 (6) "Law enforcement unit" or "law enforcement agency" means the same as that term  
88 is defined in Section 78B-7-302.

89 (7) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace

90 Officer Classifications.

91 (8) "Protective order" means:

92 (a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of  
93 which the petitioner and respondent have been given notice in accordance with this chapter; or

94 (b) an order issued under Subsection 77-36-5.1(6).

95 (9) "Sexual violence" means commission or the attempt to commit any sexual offense  
96 described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5, Part 4,  
97 Sexual Exploitation.

98 Section 4. Section **78B-7-503** is enacted to read:

99 **78B-7-503. Sexual violence protective orders.**

100 (1) An individual who has been subjected to sexual violence, and who is neither a  
101 cohabitant nor a dating partner of the perpetrator, may seek an ex parte sexual violence  
102 protective order or a sexual violence protective order under this part.

103 (2) A petition seeking a sexual violence protective order may not be withdrawn without  
104 approval of the court.

105 Section 5. Section **78B-7-504** is enacted to read:

106 **78B-7-504. Sexual violence protective orders -- Ex parte protective orders --**  
107 **Modification of orders -- Service of process -- Duties of the court.**

108 (1) If it appears from a petition for a protective order or a petition to modify a  
109 protective order that sexual violence has occurred, or that a modification of a protective order  
110 is required, a court may:

111 (a) without notice, immediately issue an order for protection ex parte or modify an  
112 order for protection ex parte as it considers necessary to protect the petitioner and all parties  
113 named to be protected in the petition; or

114 (b) upon notice, issue a protective order or modify a protective order after a hearing,  
115 regardless of whether the respondent appears.

116 (2) A court may grant the following relief without notice in a protective order or a  
117 modification issued ex parte:

118 (a) enjoin the respondent from threatening to commit sexual violence, committing  
119 sexual violence, or harassing the petitioner or any designated family member or household  
120 member;

121 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating  
122 with the petitioner or any designated family member or household member, directly or  
123 indirectly;

124 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified  
125 distance of the petitioner;

126 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to  
127 stay away from the following places and their premises:

128 (i) the petitioner's residence or any designated family member's residence or household  
129 member's residence;

130 (ii) the petitioner's school or any designated family member's school or household  
131 member's school;

132 (iii) the petitioner's or any designated family member's place of employment or  
133 household member's place of employment;

134 (iv) the petitioner's place of worship or any designated family member's place of  
135 worship or household member's place of worship; or

136 (v) any specified place frequented by the petitioner or any designated family member  
137 or household member;

138 (e) if the petitioner or designated family member or household member attends the  
139 same school as the respondent, is employed at the same place of employment as the  
140 respondent, or attends the same place of worship, the court:

141 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent  
142 from the respondent's school, place of employment, or place of worship; and

143 (ii) may enter an order governing the respondent's conduct at the respondent's school,  
144 place of employment, or place of worship; and

145 (f) upon finding that the respondent's use or possession of a weapon may pose a serious  
146 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a  
147 firearm or other weapon specified by the court.

148 (3) Following the protective order hearing, the court shall:

149 (a) as soon as possible, deliver the order to the county sheriff for service of process;

150 (b) make reasonable efforts to ensure that the order for protection is understood by the  
151 petitioner, and the respondent, if present;

152 (c) transmit electronically, by the end of the next business day after the order is issued,  
153 a copy of the order for protection to the local law enforcement agency or agencies designated  
154 by the petitioner; and

155 (d) transmit a copy of the order to the statewide domestic and sexual violence network  
156 described in Section [78B-7-113](#).

157 (4) (a) Each protective order shall include two separate portions, one for provisions, the  
158 violation of which are criminal offenses, and one for provisions, the violation of which are civil  
159 violations, as follows:

160 (i) criminal offenses are those under Subsections (2)(a) through (e); and

161 (ii) civil offenses are those under Subsection (2)(f).

162 (b) The criminal provision portion shall include a statement that violation of any  
163 criminal provision is a class A misdemeanor.

164 (c) The civil provision portion shall include a notice that violation of or failure to  
165 comply with a civil provision is subject to contempt proceedings.

166 (5) The protective order shall include:

167 (a) a designation of a specific date, determined by the court, when the civil portion of  
168 the protective order either expires or is scheduled for review by the court, which date may not  
169 exceed 150 days after the date the order is issued, unless the court indicates on the record the  
170 reason for setting a date beyond 150 days;

171 (b) information the petitioner is able to provide to facilitate identification of the  
172 respondent, such as social security number, driver license number, date of birth, address,  
173 telephone number, and physical description; and

174 (c) a statement advising the petitioner that:

175 (i) after two years from the date of issuance of the protective order, a hearing may be  
176 held to dismiss the criminal portion of the protective order;

177 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,  
178 advise the court of the petitioner's current address for notice of any hearing; and

179 (iii) the address provided by the petitioner will not be made available to the respondent.

180 (6) (a) The county sheriff that receives the order from the court, pursuant to this  
181 Subsection (6)(a), shall provide expedited service for orders for protection issued in accordance  
182 with this chapter and shall transmit verification of service of process, when the order has been

183 served, to the statewide domestic and sexual violence network described in Section 78B-7-113.

184 (b) This section does not prohibit any law enforcement agency from providing service  
185 of process if that law enforcement agency:

186 (i) has contact with the respondent and service by that law enforcement agency is  
187 possible; or

188 (ii) determines that under the circumstances, providing service of process on the  
189 respondent is in the best interest of the petitioner.

190 (7) (a) When an order is served on a respondent in a jail or other holding facility, the  
191 law enforcement agency managing the facility shall make a reasonable effort to provide notice  
192 to the petitioner at the time the respondent is released from incarceration.

193 (b) Notification of the petitioner shall consist of a good faith reasonable effort to  
194 provide notification, including mailing a copy of the notification to the last-known address of  
195 the victim.

196 (8) A court may modify or vacate an order of protection or any provisions in the order  
197 after notice and hearing, except that the criminal provisions of a protective order may not be  
198 vacated within two years of issuance unless the petitioner:

199 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah  
200 Rules of Civil Procedure, and the petitioner personally appears, in person or through court  
201 video conferencing, before the court and gives specific consent to the vacation of the criminal  
202 provisions of the protective order; or

203 (b) submits a verified affidavit, stating agreement to the vacation of the criminal  
204 provisions of the protective order.

205 (9) A protective order may be modified without a showing of substantial and material  
206 change in circumstances.

207 (10) Insofar as the provisions of this chapter are more specific than the Utah Rules of  
208 Civil Procedure, regarding protective orders, the provisions of this chapter govern.

209 Section 6. Section **78B-7-505** is enacted to read:

210 **78B-7-505. Hearings.**

211 (1) (a) When a court issues an ex parte sexual violence protective order, the court shall  
212 set a date for a hearing on the petition to be held within 20 days after the day on which the ex  
213 parte order is issued.

214 (b) If at that hearing the court does not issue a sexual violence protective order, the ex  
215 parte protective order shall expire, unless it is otherwise extended by the court. Extensions  
216 beyond the 20-day period may not be granted unless:

217 (i) the petitioner is unable to be present at the hearing;

218 (ii) the respondent has not been served;

219 (iii) the respondent has had the opportunity to present a defense at the hearing;

220 (iv) the respondent requests that the ex parte order be extended; or

221 (v) exigent circumstances exist.

222 (c) Under no circumstances may an ex parte order be extended beyond 180 days from  
223 the date of initial issuance.

224 (d) If at that hearing the court issues a sexual violence protective order, the ex parte  
225 protective order remains in effect until service of process of the protective order is completed.

226 (e) A protective order issued after notice and a hearing is effective until further order of  
227 the court.

228 (f) If the hearing on the petition is heard by a commissioner, either the petitioner or  
229 respondent may file an objection within 10 days of the entry of the recommended order and the  
230 assigned judge shall hold a hearing within 20 days of the filing of the objection.

231 (2) Upon a hearing under this section, the court may grant any of the relief described in  
232 Section [78B-7-504](#).

233 (3) When a court denies a petition for an ex parte sexual violence protective order or a  
234 petition to modify an order for protection ex parte, upon the request of the petitioner, the court  
235 shall set the matter for hearing and notify the petitioner and serve the respondent.

236 (4) A respondent who has been served with an ex parte sexual violence protective  
237 order may seek to vacate the ex parte protective order prior to the hearing scheduled pursuant  
238 to Subsection (1)(a) by filing a verified motion to vacate. The respondent's verified motion to  
239 vacate and a notice of hearing on that motion shall be personally served on the petitioner at  
240 least two days prior to the hearing on the motion to vacate.

241 Section 7. Section **78B-7-506** is enacted to read:

242 **78B-7-506. Fees -- Service of process.**

243 (1) Protective orders issued under this part shall be served by the sheriff's office,  
244 constable's office, or any law enforcement agency or peace officer, in accordance with

245 Subsection 78B-7-504(6).

246 (2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement  
247 agency for:

248 (a) filing a petition under this part;

249 (b) obtaining a protective order under this part; or

250 (c) service of a protective order issued under this part.

251 (3) (a) The offices of the court clerk shall provide forms and nonlegal assistance to an  
252 individual seeking to proceed under this part.

253 (b) The Administrative Office of the Courts shall:

254 (i) develop and adopt uniform forms for petitions and orders for protection in  
255 accordance with the provisions of this chapter; and

256 (ii) provide the forms described in Subsection (3)(b)(i) to the clerk of each court  
257 authorized to issue protective orders.

258 (c) The forms described in Subsection (3)(b)(i) shall include:

259 (i) a statement notifying the petitioner for an ex parte sexual violence protective order  
260 that knowing falsification of any statement or information provided for the purpose of  
261 obtaining a protective order may subject the petitioner to felony prosecution;

262 (ii) language stating violation of any criminal provision is a class A misdemeanor; and

263 (iii) a space for any information the petitioner is able to provide to facilitate  
264 identification of the respondent, including social security number, driver license number, date  
265 of birth, address, telephone number, and physical description.

266 (4) If the individual seeking to proceed under this chapter is not represented by an  
267 attorney, it is the responsibility of the court clerk's office to provide:

268 (a) the forms adopted pursuant to Subsection (3);

269 (b) all other forms required to petition for an order for protection, including forms for  
270 service;

271 (c) except for as provided by Subsection (5), clerical assistance in filling out the forms  
272 and filing the petition, in accordance with Subsection (3)(a);

273 (d) information regarding the means available for the service of process;

274 (e) a list of legal service organizations that may represent the petitioner in an action  
275 brought under this part, with the phone numbers of those organizations; and

276 (f) written information regarding the procedure for transporting a jailed or imprisoned  
277 respondent to the protective order hearing, including an explanation for the use of  
278 transportation order forms when necessary.

279 (5) A court clerk's office may designate any other entity, agency, or individual to  
280 provide the service described in Subsection (4)(c), but the court clerk's office is responsible to  
281 see that the service is provided.

282 (6) A petition for a sexual violence protective order or ex parte sexual violence  
283 protective order shall be in writing and verified.

284 (7) (a) All protective orders issued under this part shall be issued in the form adopted  
285 by the Administrative Office of the Courts under Subsection (3)(b).

286 (b) Each protective order issued under this part, except orders issued ex parte, shall  
287 include the following language:

288 "Respondent was afforded both notice and opportunity to be heard in the hearing that  
289 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,  
290 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of  
291 Columbia, tribal lands, and United States territories. This order complies with the Uniform  
292 Interstate Enforcement of Domestic Violence Protection Orders Act."

293 Section 8. Section **78B-7-507** is enacted to read:

294 **78B-7-507. Enforcement.**

295 (1) A law enforcement officer shall, without a warrant, arrest an individual if the  
296 officer has probable cause to believe that the individual has intentionally or knowingly violated  
297 a sexual violence protective order issued under this part, regardless of whether the violation  
298 occurred in the presence of the officer.

299 (2) A violation of a sexual violence protective order issued under this part constitutes a  
300 class A misdemeanor.

301 Section 9. Section **78B-7-508** is enacted to read:

302 **78B-7-508. Duties of law enforcement officers -- Notice to victims.**

303 (1) A law enforcement officer who responds to an allegation of sexual violence shall  
304 use all reasonable means to protect the victim and prevent further sexual violence, including:

305 (a) taking action that, in the officer's discretion, is reasonably necessary to provide for  
306 the safety of the victim and any family or household member;

- 307 (b) confiscating any weapon or weapons involved in the alleged sexual violence;  
308 (c) making arrangements for the victim and any child to obtain emergency housing or  
309 shelter;  
310 (d) arranging, facilitating, or providing for the victim and any child to obtain medical  
311 treatment; and  
312 (e) arranging, facilitating, or providing the victim with immediate and adequate notice  
313 of the rights of victims and of the remedies and services available to victims of sexual violence,  
314 in accordance with Subsection (2).

315 (2) (a) A law enforcement officer shall give written notice to the victim in simple  
316 language, describing the rights and remedies available under this chapter.

317 (b) The written notice shall also include:

318 (i) a statement that the forms needed in order to obtain an order for protection are  
319 available from the court clerk's office in the judicial district where the victim resides or is  
320 temporarily domiciled; and

321 (ii) a list of shelters, services, and resources available in the appropriate community,  
322 together with telephone numbers, to assist the victim in accessing any needed assistance.

323 (3) If a weapon is confiscated under this section, the law enforcement agency shall  
324 return the weapon to the individual from whom the weapon is confiscated if a sexual violence  
325 protective order is not issued or once the sexual violence protective order is terminated.

326 Section 10. Section **78B-7-509** is enacted to read:

327 **78B-7-509. Dismissal of protective order -- Expiration.**

328 (1) Except as provided in Subsection (6), a sexual violence protective order that has  
329 been in effect for at least two years may be dismissed if the court determines that the petitioner  
330 no longer has a reasonable fear of future harm or sexual violence. In determining whether the  
331 petitioner no longer has a reasonable fear of future harm or sexual violence, the court shall  
332 consider the following factors:

333 (a) whether the respondent has complied with treatment recommendations related to  
334 sexual violence that were recommended at the time the protective order was entered;

335 (b) whether the protective order was violated during the time it was in force;

336 (c) claims of harassment or sexual violence by either party during the time the  
337 protective order was in force;

- 338 (d) counseling or therapy undertaken by either party; and  
339 (e) any other factors the court considers relevant to the case before the court.  
340 (2) Except as provided in Subsection (6), the court may amend or dismiss a protective  
341 order issued in accordance with this part that has been in effect for at least one year if the court  
342 finds that:  
343 (a) the basis for the issuance of the protective order no longer exists;  
344 (b) the petitioner has repeatedly acted in contravention of the protective order  
345 provisions to intentionally or knowingly induce the respondent to violate the protective order;  
346 (c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable  
347 fear of the respondent; and  
348 (d) the respondent has not been convicted of a protective order violation or any crime  
349 of sexual violence subsequent to the issuance of the protective order, and there are no  
350 unresolved charges involving sexual violence still on file with the court.  
351 (3) The court shall enter sanctions against either party if the court determines that  
352 either party acted:  
353 (a) in bad faith; or  
354 (b) with intent to harass or intimidate either party.  
355 (4) Notice of a motion to dismiss a protective order shall be made by personal service  
356 on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil  
357 Procedure.  
358 (5) When the court dismisses a protective order, the court shall immediately:  
359 (a) issue an order of dismissal to be filed in the protective order action; and  
360 (b) transmit a copy of the order of dismissal to the statewide domestic and sexual  
361 violence network as described in Section [78B-7-113](#).  
362 (6) Notwithstanding the other provisions of this section, a continuous protective order  
363 may not be modified or dismissed except as provided in Subsection [77-36-5.1\(6\)](#).  
364 Section 11. Section **78B-7-510** is enacted to read:  
365 **78B-7-510. Expiration of protective order.**  
366 (1) Subject to the other provisions of this section, a civil protective order issued under  
367 this part automatically expires 10 years from the day on which the protective order is entered.  
368 (2) The protective order automatically expires as described in Subsection (1), unless

369 the petitioner files a motion before expiration of the protective order and demonstrates that:

370 (a) the petitioner has a current reasonable fear of future harm or sexual violence, as  
371 described in Subsection 78B-7-502(1); or

372 (b) the respondent has been convicted of a protective order violation or any crime of  
373 sexual violence subsequent to the issuance of the protective order.

374 (3) If the court grants the motion under Subsection (2), the court shall set a new date on  
375 which the protective order expires. The protective order will expire unless the petitioner files a  
376 motion described in Subsection (2) to extend the protective order.

377 Section 12. Section **78B-7-511** is enacted to read:

378 **78B-7-511. Statewide domestic and sexual violence network -- Peace officers'**  
379 **duties -- Prevention of abuse in absence of order -- Limitation of liability.**

380 (1) (a) Law enforcement units, the Department of Public Safety, and the Administrative  
381 Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene  
382 of an alleged violation of a protective order or pretrial criminal no contact order have  
383 immediate access to information necessary to verify the existence and terms of that order and  
384 other orders of the court required to be made available on the network by the provisions of this  
385 chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or Section 77-38-3. Those  
386 officers shall use every reasonable means to enforce the court's order, in accordance with the  
387 requirements and procedures of this chapter, Title 77, Chapter 36, Cohabitant Abuse  
388 Procedures Act, and Section 77-38-3.

389 (b) The Administrative Office of the Courts, in cooperation with the Department of  
390 Public Safety and the Criminal Investigations and Technical Services Division, established in  
391 Section 53-10-103, shall provide for a single, statewide network containing:

392 (i) all orders for protection issued by a court of this state; and

393 (ii) all other court orders or reports of court action that are required to be available on  
394 the network under this chapter, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and  
395 Section 77-38-3.

396 (c) The entities described in Subsection (1)(b) may utilize the same mechanism as the  
397 statewide warrant system, described in Section 53-10-208.

398 (d) All orders and reports required to be available on the network shall be available  
399 within 24 hours after court action. If the court that issued the order is not part of the state court

400 computer system, the orders and reports shall be available on the network within 72 hours.

401 (e) The information contained in the network shall be available to a court, law  
402 enforcement officer, or agency upon request.

403 (2) When any peace officer has reason to believe a cohabitant or child of a cohabitant  
404 is being abused, or that there is a substantial likelihood of immediate danger of abuse, although  
405 no protective order has been issued, that officer shall use all reasonable means to prevent the  
406 abuse, including:

407 (a) remaining on the scene as long as it reasonably appears there would otherwise be  
408 danger of abuse;

409 (b) making arrangements for the victim to obtain emergency medical treatment;

410 (c) making arrangements for the victim to obtain emergency housing or shelter care;

411 (d) explaining to the victim his or her rights in these matters;

412 (e) asking the victim to sign a written statement describing the incident of abuse; or

413 (f) arresting and taking into physical custody the abuser in accordance with the

414 provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

415 (3) No person or institution may be held criminally or civilly liable for the performance  
416 of, or failure to perform, any duty established by this chapter, so long as that person acted in  
417 good faith and without malice.