

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1356

Introduced by Assembly Member Bloom

February 22, 2013

An act to amend Section ~~412.20~~ of the Code of Civil Procedure 1708.7 of the Civil Code, relating to ~~civil actions~~ stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Bloom. ~~Summons~~. *Stalking: remedies.*

Existing law provides that a person is liable for the tort of stalking if he or she engaged in a pattern of conduct intended to follow, alarm, or harass the plaintiff, that resulted in the plaintiff reasonably fearing for his or her safety, or the safety of an immediate family member, and the person has either made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or that of an immediate family member, and how continued in his or her pattern of conduct after the plaintiff demands that he or she cease, or has violated a restraining order.

This bill would include a pattern of conduct intended to place the plaintiff under surveillance, as defined, within those elements defining the tort of stalking. The bill would permit the plaintiff to show, as an alternative to the plaintiff reasonably fearing for his or her safety or that of a family member, that the pattern of conduct resulted in the plaintiff suffering substantial emotional distress, and that the pattern of conduct would cause a reasonable person to suffer substantial emotional distress. The bill would require the plaintiff to show that the person has either made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or that of an immediate

family member, or, reckless disregard for the safety of the plaintiff or that of an immediate family member. The bill would relieve the plaintiff, under exigent circumstances, as specified, of the requirement to demand that the defendant cease his or her behavior. The bill would also define the terms “follows,” “place under surveillance,” and “substantial emotional distress” for purposes of these provisions.

~~Existing law requires that a summons for a civil action be directed to the defendant, signed by the clerk, and issued under the seal of the court in which the action is pending, and that it contain specified information, instructions, and admonishments regarding the action.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1708.7 of the Civil Code is amended to
2 read:

3 1708.7. (a) A person is liable for the tort of stalking when the
4 plaintiff proves all of the following elements of the tort:

5 (1) The defendant engaged in a pattern of conduct the intent of
6 which was to follow, alarm, *place under surveillance*, or harass
7 the plaintiff. In order to establish this element, the plaintiff shall
8 be required to support his or her allegations with independent
9 corroborating evidence.

10 (2) As a result of that pattern of conduct, ~~the plaintiff~~ *either of*
11 *the following occurred:*

12 (A) *The plaintiff* reasonably feared for his or her safety, or the
13 safety of an immediate family member. For purposes of this
14 ~~paragraph subparagraph~~, “immediate family” means a spouse,
15 parent, child, any person related by consanguinity or affinity within
16 the second degree, or any person who regularly resides, or, within
17 the six months preceding any portion of the pattern of conduct,
18 regularly resided, in the plaintiff’s household.

19 (B) *The plaintiff suffered substantial emotional distress, and*
20 *the pattern of conduct would cause a reasonable person to suffer*
21 *substantial emotional distress.*

22 (3) One of the following:

1 (A) The defendant, as a part of the pattern of conduct specified
2 in paragraph (1), made a credible threat with ~~the~~ *either (i) the* intent
3 to place the plaintiff in reasonable fear for his or her safety, or the
4 safety of an immediate family ~~member and, on at~~ *member, or (ii)*
5 *reckless disregard for the safety of the plaintiff or that of an*
6 *immediate family member. In addition, the plaintiff must have, on*
7 *at least one occasion, ~~the~~ plaintiff* clearly and definitively
8 demanded that the defendant cease and abate his or her pattern of
9 conduct and the defendant persisted in his or her pattern of conduct
10 *unless exigent circumstances make the plaintiff's communication*
11 *of the demand impractical or unsafe.*

12 (B) The defendant violated a restraining order, including, but
13 not limited to, any order issued pursuant to Section 527.6 of the
14 Code of Civil Procedure, prohibiting any act described in
15 subdivision (a).

16 (b) For the purposes of this section:

17 (1) "Pattern of conduct" means conduct composed of a series
18 of acts over a period of time, however short, evidencing a
19 continuity of purpose. Constitutionally protected activity is not
20 included within the meaning of "pattern of conduct."

21 (2) "Credible threat" means a verbal or written threat, including
22 that communicated by means of an electronic communication
23 device, or a threat implied by a pattern of conduct, *including, but*
24 *not limited to, acts in which a defendant directly, indirectly, or*
25 *through third parties, by any action, method, device, or means,*
26 *follows, harasses, monitors, surveils, threatens, or interferes with*
27 *or damages the plaintiff's property, or a combination of verbal,*
28 written, or electronically communicated statements and conduct,
29 made with the intent and apparent ability to carry out the threat so
30 as to cause the person who is the target of the threat to reasonably
31 fear for his or her safety or the safety of his or her immediate
32 family.

33 (3) "Electronic communication device" includes, but is not
34 limited to, telephones, cellular telephones, computers, video
35 recorders, fax machines, or pagers. "Electronic communication"
36 has the same meaning as the term defined in Subsection 12 of
37 Section 2510 of Title 18 of the United States Code.

38 (4) "Follows" means to move in relative proximity to a person
39 as that person moves from place to place or to remain in relative
40 proximity to a person who is stationary or whose movements are

1 *confined to a small area but does not include following the plaintiff*
2 *within the residence of the defendant.*

3 ~~(4)~~

4 (5) “Harass” means a knowing and willful course of conduct
5 directed at a specific person which seriously alarms, annoys,
6 torments, or terrorizes the person, and which serves no legitimate
7 purpose. The course of conduct must be such as would cause a
8 reasonable person to suffer substantial emotional distress, and must
9 actually cause substantial emotional distress to the person.

10 (6) “Place under surveillance” means remaining present outside
11 of the plaintiff’s school, place of employment, vehicle, residence,
12 other than the residence of the defendant, or other place occupied
13 by the plaintiff. For purposes of the liability created by subdivision
14 (a), “place under surveillance” does not include any lawful activity
15 of private investigators licensed pursuant to Article 3 (commencing
16 with Section 7520) of Chapter 11.3 of Division 3 of the Business
17 and Professions Code, or of law enforcement personnel or
18 employees of agencies, either public or private, who, in the course
19 and scope of their employment, encourage or attempt to engage
20 in any conduct or activity to obtain evidence of suspected illegal
21 activity or other misconduct, suspected violation of any
22 administrative rule or regulation, suspected fraudulent conduct,
23 or any suspected activity involving a violation of law or business
24 practice or conduct of a public official that adversely affects public
25 welfare, health, or safety.

26 (7) “Substantial emotional distress” shall not be construed to
27 have the same meaning as the “severe emotional distress”
28 requirement for intentional infliction of emotional distress.
29 “Substantial emotional distress” does not require a showing of
30 physical manifestations of emotional distress; rather, it requires
31 the evaluation of the totality of the circumstances to determine
32 whether the defendant reasonably caused the plaintiff substantial
33 fear, anxiety, or emotional torment.

34 (c) A person who commits the tort of stalking upon another is
35 liable to that person for damages, including, but not limited to,
36 general damages, special damages, and punitive damages pursuant
37 to Section 3294.

38 (d) In an action pursuant to this section, the court may grant
39 equitable relief, including, but not limited to, an injunction.

1 (e) The rights and remedies provided in this section are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

4 (f) This section shall not be construed to impair any
5 constitutionally protected activity, including, but not limited to,
6 speech, protest, and assembly.

7 (g) *This act is an exercise of the police power of the state for*
8 *the protection of the health, safety, and welfare of the people of*
9 *the State of California, and shall be liberally construed to*
10 *effectuate those purposes.*

11 SECTION 1. Section 412.20 of the Code of Civil Procedure
12 is amended to read:

13 412.20. (a) ~~Except as otherwise required by statute, a summons~~
14 ~~shall be directed to the defendant, signed by the clerk, and issued~~
15 ~~under the seal of the court in which the action is pending, and it~~
16 ~~shall contain all of the following:~~

17 ~~(1) The title of the court in which the action is pending.~~

18 ~~(2) The names of the parties to the action.~~

19 ~~(3) A direction that the defendant file with the court a written~~
20 ~~pleading in response to the complaint within 30 days after summons~~
21 ~~is served on him or her.~~

22 ~~(4) A notice that, unless the defendant so responds, his or her~~
23 ~~default will be entered upon application by the plaintiff, and the~~
24 ~~plaintiff may apply to the court for the relief demanded in the~~
25 ~~complaint, which could result in garnishment of wages, taking of~~
26 ~~money or property, or other relief.~~

27 ~~(5) The following statement in boldface type: “You may seek~~
28 ~~the advice of an attorney in any matter connected with the~~
29 ~~complaint or this summons. Such attorney should be consulted~~
30 ~~promptly so that your pleading may be filed or entered within the~~
31 ~~time required by this summons.”~~

32 ~~(6) The following introductory legend at the top of the summons~~
33 ~~above all other matter, in boldface type, in English and Spanish:~~

34 ~~“Notice! You have been sued. The court may decide against~~
35 ~~you without your being heard unless you respond within 30 days.~~
36 ~~Read information below.”~~

37 ~~(b) Each county may, by ordinance, require that the legend~~
38 ~~contained in paragraph (6) of subdivision (a) be set forth in every~~
39 ~~summons issued out of the courts of that county in any additional~~
40 ~~foreign language, if the legend in the additional foreign language~~

- 1 ~~is set forth in the summons in the same manner as required in that~~
- 2 ~~paragraph.~~
- 3 ~~(e) A summons in a form approved by the Judicial Council~~
- 4 ~~complies with this section.~~