

AMENDED IN ASSEMBLY JANUARY 6, 2014

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 1708.7 of the Civil Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Bloom. 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,~~ *surveillance* 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.

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, either of the following
11 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 subparagraph, “immediate family” means a spouse, parent, child,
15 any person related by consanguinity or affinity within the second
16 degree, or any person who regularly resides, or, within the six
17 months preceding any portion of the pattern of conduct, regularly
18 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:

23 (A) The defendant, as a part of the pattern of conduct specified
24 in paragraph (1), made a credible threat with either (i) the intent
25 to place the plaintiff in reasonable fear for his or her safety, or the
26 safety of an immediate family member, or (ii) reckless disregard
27 for the safety of the plaintiff or that of an immediate family
28 member. In addition, the plaintiff must have, on at least one

1 occasion, clearly and definitively demanded that the defendant
2 cease and abate his or her pattern of conduct and the defendant
3 persisted in his or her pattern of conduct unless exigent
4 circumstances make the plaintiff’s communication of the demand
5 impractical or unsafe.

6 (B) The defendant violated a restraining order, including, but
7 not limited to, any order issued pursuant to Section 527.6 of the
8 Code of Civil Procedure, prohibiting any act described in
9 subdivision (a).

10 (b) For the purposes of this section:

11 (1) “Pattern of conduct” means conduct composed of a series
12 of acts over a period of time, however short, evidencing a
13 continuity of purpose. Constitutionally protected activity is not
14 included within the meaning of “pattern of conduct.”

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

27 (3) “Electronic communication device” includes, but is not
28 limited to, telephones, cellular telephones, computers, video
29 recorders, fax machines, or pagers. “Electronic communication”
30 has the same meaning as the term defined in Subsection 12 of
31 Section 2510 of Title 18 of the United States Code.

32 (4) “Follows” means to move in relative proximity to a person
33 as that person moves from place to place or to remain in relative
34 proximity to a person who is stationary or whose movements are
35 confined to a small area but does not include following the plaintiff
36 within the residence of the defendant.

37 (5) “Harass” means a knowing and willful course of conduct
38 directed at a specific person which seriously alarms, annoys,
39 torments, or terrorizes the person, and which serves no legitimate
40 purpose. The course of conduct must be such as would cause a

1 reasonable person to suffer substantial emotional distress, and must
2 actually cause substantial emotional distress to the person.

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

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

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

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

36 (e) The rights and remedies provided in this section are
37 cumulative and in addition to any other rights and remedies
38 provided by law.

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

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

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