

Assembly Bill No. 1356

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

Passed the Senate August 25, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1708.7 of the Civil Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, 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 defendant 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 has violated a restraining order, as specified.

This bill would include a pattern of conduct intended to place the plaintiff under 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.

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

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

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

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

(2) As a result of that pattern of conduct, either of the following occurred:

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

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

(3) One of the following:

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

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

(b) For the purposes of this section:

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

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

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

(4) “Follows” means to move in relative proximity to a person as that person moves from place to place or to remain in relative proximity to a person who is stationary or whose movements are confined to a small area but does not include following the plaintiff within the residence of the defendant. For purposes of the liability created by subdivision (a), “follows” does not include any lawful activity of private investigators licensed pursuant to Article 3 (commencing with Section 7520) of Chapter 11.3 of Division 3 of the Business and Professions Code, or of law enforcement personnel or employees of agencies, either public or private, who, in the course and scope of their employment, encourage or attempt to engage in any conduct or activity to obtain evidence of suspected illegal activity or other misconduct, suspected violation of any administrative rule or regulation, suspected fraudulent conduct, or any suspected activity involving a violation of law or business practice or conduct of a public official that adversely affects public welfare, health, or safety. For purposes of the liability created by subdivision (a), “follows” also does not include any newsgathering conduct connected to a newsworthy event.

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

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

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

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

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

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

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

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

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

Approved _____, 2014

Governor