

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1407

Introduced by Assembly Member Atkins
(Coauthor: Assembly Member Cristina Garcia)
(Coauthor: Senator Pan)

February 27, 2015

An act to add ~~Part 8 (commencing with Section 296)~~ to Division 2 of *Section 6347* to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, as amended, Atkins. Family law: protective orders: wireless telephone numbers.

Existing law authorizes a court to issue an ex parte protective order enjoining a party from engaging in specified acts against another party, including, among other things, threatening or harassing that party. Existing law also authorizes a court to include these protective orders and other orders in a judgment entered in specified proceedings, including, among others, a proceeding for the dissolution of marriage. A violation of these court orders constitutes contempt of court, which is punishable as a misdemeanor.

This bill would, commencing July 1, 2016, additionally authorize a court, ~~during the pendency of specified proceedings, or in a judgment entered in those specified proceedings,~~ *after notice and a hearing*, to issue an order directing a wireless telephone service provider to transfer the billing responsibility and rights to a wireless telephone number or

numbers to a requesting party. The bill would require that order to be a separate order directed to the wireless telephone service provider that lists the name and billing telephone number of the accountholder, the name and contact information of the person to whom the number or numbers will be transferred, and each number to be transferred to that person. The bill would require, upon transfer of billing responsibility for and rights to a wireless telephone number, the requesting party to assume all financial responsibility for the transferred wireless telephone number, monthly service costs, and costs for any mobile device associated with the wireless telephone number. The bill would prohibit a cause of action against a wireless telephone service provider, its officers, employees, or agents, for actions taken in accordance with the terms of the court order. The bill would require the Judicial Council to, on or before July 1, 2016, develop any forms or rules necessary to effectuate these provisions.

By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares all of the
 2 following:
 3 (a) For many victims of domestic violence, a wireless telephone
 4 is their lifeline to the community resources, life-saving services,
 5 and support network they need to leave their batterer and abusive
 6 environment. For the majority of victims, shelter in a confidential
 7 safehouse is a last resort, and, in fact, unnecessary. Victims are
 8 going about their lives, working, and taking care of their children,
 9 as they are making plans and determining their next steps to safely
 10 leave their abuser. Many victims are able to access counseling
 11 services and obtain legal assistance, such as securing a restraining
 12 order, without entering into a safehouse. For these victims, a

1 wireless telephone serves as a critical tool for making appointments
2 and communicating with their advocates.

3 (b) Allowing a victim of domestic violence to retain the use of
4 an existing wireless telephone number and access to the contacts
5 and other information that may be contained in an existing wireless
6 telephone is important for both the safety and emotional support
7 of the victim. This can be a problem if the domestic violence victim
8 is not the accountholder for the wireless telephone, as only an
9 accountholder has the authority to release the telephone number
10 or numbers contained in the account.

11 (c) According to a Wall Street Journal article, in 2011 just under
12 71 percent of households had a landline in the home, down from
13 a little more than 96 percent of households 15 years earlier. Cellular
14 telephone ownership among adults reached 89 percent in 2011, up
15 from approximately 36 percent in 1998.

16 ~~(d) When two parties are divorced, for safety reasons, a custodial
17 parent may need to monitor a child's cellular telephone. This
18 practice would be impossible when the accountholder for the
19 wireless telephone is not the custodial parent.~~

20 ~~SEC. 2. Part 8 (commencing with Section 296) is added to
21 Division 2 of the Family Code, to read:~~

22
23 ~~PART 8. WIRELESS TELEPHONE NUMBERS~~

24
25 ~~296.—~~

26 ~~SEC. 2. Section 6347 is added to the Family Code, to read:~~

27 ~~6347. (a) Commencing July 1, 2016, in order to ensure that
28 the requesting party can maintain an existing wireless telephone
29 number, and the wireless numbers of any minor children in the
30 care of the requesting party, the court may issue an order, after a
31 noticed motion and hearing during the pendency of a proceeding
32 described in subdivision (f), or include an order in a judgment in
33 a proceeding described in subdivision (f), notice and a hearing
34 directing a wireless telephone service provider to transfer the
35 billing responsibility for and rights to the wireless telephone
36 number or numbers to the requesting party, if the requesting party
37 is not the accountholder.~~

38 ~~(b) (1) The order transferring billing responsibility for and
39 rights to the wireless telephone number or numbers to a requesting
40 party shall be a separate order that is directed to the wireless~~

1 telephone service provider. The order shall list the name and billing
 2 telephone number of the accountholder, the name and contact
 3 information of the person to whom the telephone number or
 4 numbers will be transferred, and each telephone number to be
 5 transferred to that person. The court shall ensure that the contact
 6 information of the requesting party is not provided to the
 7 accountholder in proceedings held pursuant to Division 10
 8 (commencing with Section 6200).

9 (2) The order shall be served on the wireless service provider’s
 10 agent for service of process listed with the Secretary of State.

11 (3) ~~Whenever it is impossible for~~ *Where* the wireless service
 12 provider ~~to cannot~~ operationally or technically effectuate the order
 13 due to certain circumstances, including, but not limited to, any of
 14 the following, the wireless service provider shall notify the
 15 requesting party within 72 hours of receipt of the order:

16 (A) When the accountholder has already terminated the account.

17 (B) When differences in network technology prevent the
 18 functionality of a device on the network.

19 (C) When there are geographic or other limitations on network
 20 or service availability.

21 (c) (1) Upon transfer of billing responsibility for and rights to
 22 a wireless telephone number to a requesting party pursuant to
 23 subdivision (b) by a wireless telephone service provider, the
 24 requesting party shall assume all financial responsibility for the
 25 transferred wireless telephone number, monthly service costs, and
 26 costs for any mobile device associated with the wireless telephone
 27 number.

28 (2) This section shall not preclude a wireless service provider
 29 from applying any routine and customary requirements for account
 30 establishment to the requesting party as part of this transfer of
 31 billing responsibility for a wireless telephone number and any
 32 devices attached to that number, including, but not limited to,
 33 identification, financial information and customer ~~preferences;~~
 34 ~~except that the wireless service provider shall not charge the~~
 35 ~~requesting party with any initiation or start-up fee.~~ *preferences.*

36 (d) This section shall not affect the ability of the court to
 37 apportion the assets and debts of the parties as provided for in law.

38 (e) No cause of action shall lie against any wireless telephone
 39 service provider, its officers, employees, or agents, for actions

1 taken in accordance with the terms of a court order issued pursuant
2 to this section.

3 ~~(f) This section applies to proceedings held pursuant to any of~~
4 ~~the following:~~

5 ~~(1) Division 6 (commencing with Section 2000).~~

6 ~~(2) Division 8 (commencing with Section 3000).~~

7 ~~(3) Division 10 (commencing with Section 6200).~~

8 ~~(g)~~

9 (f) The Judicial Council shall, on or before July 1, 2016, develop
10 any forms or rules necessary to effectuate this section.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.