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AB-1407 Family law: protective orders: wireless telephone numbers. (2015-2016)

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Assembly Bill No. 1407

CHAPTER 415

An act to add Section 6347 to the Family Code, relating to family law.

[Approved by Governor October 01, 2015. Filed with Secretary of State October 01, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, 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, 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 or numbers, the requesting party to assume all financial responsibility for the transferred wireless telephone number or numbers, monthly service costs, and costs for any mobile device associated with the wireless telephone number or numbers. The bill would not affect the ability of the court to apportion the assets and debts of the parties as provided for in law, or the ability to determine the temporary use, possession, and control of personal property, as specified. 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) For many victims of domestic violence, a wireless telephone is their lifeline to the community resources, life-saving services, and support network they need to leave their batterer and abusive environment. For the majority of victims, shelter in a confidential safe house is a last resort, and, in fact, unnecessary. Victims are going about their lives, working, and taking care of their children, as they are making plans and determining their next steps to safely leave their abuser. Many victims are able to access counseling services and obtain legal assistance, such as securing a restraining order, without entering into a safe house. For these victims, a wireless telephone serves as a critical tool for making appointments and communicating with their advocates.

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

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

(d) A 2014 National Public Radio Survey of 72 shelters in large cities and smaller towns across the nation found that 85 percent of the shelters worked directly with victims whose abusers tracked the victims using GPS. Seventy-five percent of the shelters worked with victims whose abusers eavesdropped on their conversations remotely by using hidden mobile applications.

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

6347. (a) Commencing July 1, 2016, in order to ensure that the requesting party can maintain an existing wireless telephone number, and the wireless numbers of any minor children in the care of the requesting party, the court may issue an order, after notice and a hearing, directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the requesting party, if the requesting party is not the accountholder.

(b) (1) The order transferring billing responsibility for and rights to the wireless telephone number or numbers to a requesting party shall be a separate order that is directed to the wireless telephone service provider. The order shall list the name and billing telephone number of the accountholder, the name and contact information of the person to whom the telephone number or numbers will be transferred, and each telephone number to be transferred to that person. The court shall ensure that the contact information of the requesting party is not provided to the accountholder in proceedings held pursuant to Division 10 (commencing with Section 6200).

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

(3) Where the wireless service provider cannot operationally or technically effectuate the order due to certain circumstances, including, but not limited to, any of the following, the wireless service provider shall notify the requesting party within 72 hours of receipt of the order:

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

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

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

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

(2) This section shall not preclude a wireless service provider from applying any routine and customary requirements for account establishment to the requesting party as part of this transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers, including, but not limited to, identification, financial information, and customer preferences.

(d) This section shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law, or the ability to determine the temporary use, possession, and control of personal property pursuant to Sections 6324 and 6340.

(e) No cause of action shall lie against any wireless telephone service provider, its officers, employees, or agents, for actions taken in accordance with the terms of a court order issued pursuant to this section.

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

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