S T A T E O F N E W Y O R K

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I N S E N A T E

May 25, 2016

Introduced by Sens. GRIFFO, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the family court act, in relation to authorizing the court to issue orders requiring wireless telephone companies to transfer the billing responsibility and rights to wireless telephone numbers in instances of domestic violence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature finds and declares that:

(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

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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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.

S 2. The family court act is amended by adding a new section 848 to read as follows:

S 848. TRANSFER OF WIRELESS TELEPHONE ACCOUNTS. (A) IN ORDER TO ENSURE THAT THE PETITIONER CAN MAINTAIN AN EXISTING WIRELESS TELEPHONE NUMBER, AND THE WIRELESS NUMBERS OF ANY MINOR CHILDREN IN THE CARE OF THE PETITIONER, 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 PETITIONER, IF THE PETITIONER IS NOT THE ACCOUNTHOLDER.

(B) (I) THE ORDER TRANSFERRING BILLING RESPONSIBILITY FOR AND RIGHTS TO THE WIRELESS TELEPHONE NUMBER OR NUMBERS TO A PETITIONER 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 PETITIONER IS NOT PROVIDED TO THE ACCOUNTHOLDER IN PROCEEDINGS HELD PURSUANT TO THIS ARTICLE.

(II) THE ORDER SHALL BE SERVED ON THE WIRELESS SERVICE PROVIDER'S AGENT FOR SERVICE OF PROCESS LISTED WITH THE SECRETARY OF STATE.

(III) 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 PETITIONER WITHIN SEVENTY-TWO HOURS OF RECEIPT OF THE ORDER:

(1) WHEN THE ACCOUNTHOLDER HAS ALREADY TERMINATED THE ACCOUNT.

(2) WHEN DIFFERENCES IN NETWORK TECHNOLOGY PREVENT THE FUNCTIONALITY OF A DEVICE ON THE NETWORK.

(3) WHEN THERE ARE GEOGRAPHIC OR OTHER LIMITATIONS ON NETWORK OR SERVICE AVAILABILITY.

(C) (I) UPON TRANSFER OF BILLING RESPONSIBILITY FOR AND RIGHTS TO A WIRELESS TELEPHONE NUMBER OR NUMBERS TO A PETITIONER PURSUANT TO SUBDIVISION (B) OF THIS SECTION BY A WIRELESS TELEPHONE SERVICE PROVIDER, THE PETITIONER 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.

(II) THIS SECTION SHALL NOT PRECLUDE A WIRELESS SERVICE PROVIDER FROM APPLYING ANY ROUTINE AND CUSTOMARY REQUIREMENTS FOR ACCOUNT ESTABLISHMENT TO THE PETITIONER 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.

(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.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that effective immediately the chief administrator of the courts is authorized to promulgate any and all rules and regulations and to take any other measures necessary to implement this act on or before such effective date.