

AMENDED IN SENATE MAY 3, 2011
AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 558

Introduced by Senator Simitian

February 17, 2011

An act to amend Section 15657 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 558, as amended, Simitian. Elder and dependent adults: abuse or neglect: damages.

Existing law provides for the award of attorney's fees and costs to, and the recovery of damages by a plaintiff when it is proven by clear and convincing evidence that a defendant is liable for physical abuse or neglect of an elder or dependent adult and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would revise these provisions to change the standard of proof to a preponderance of the evidence.

Existing law authorizes a plaintiff to recover damages for the sake of example and by way of punishing the defendant in addition to the actual damages. Existing law provides that an employer is not liable for punitive damages based on the acts of an employee unless certain conditions are satisfied. Existing law requires that these conditions regarding the imposition of punitive damages on an employer based upon the acts of an employee be satisfied before any damages or attorney's fees permitted due to liability for physical abuse or neglect of an elder or dependent adult are authorized to be imposed against an employer.

This bill would instead require that these conditions regarding the imposition of punitive damages on an employer be satisfied before any punitive damages may be imposed against an employer found liable for physical abuse, as defined, or neglect, as defined. *This bill would state that these provisions are not intended to affect the specified standard of proof for punitive damages.*

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 15657 of the Welfare and Institutions
2 Code is amended to read:

3 15657. (a) Where it is proven by a preponderance of the
4 evidence that a defendant is liable for physical abuse as defined
5 in Section 15610.63, or neglect as defined in Section 15610.57,
6 and that the defendant has been guilty of recklessness, oppression,
7 fraud, or malice in the commission of this abuse, the following
8 shall apply, in addition to all other remedies otherwise provided
9 by law:

10 (a)

11 (1) The court shall award to the plaintiff reasonable attorney's
12 fees and costs. "Costs" includes, but is not limited to, reasonable
13 fees for the services of a conservator, if any, devoted to the
14 litigation of a claim brought under this article.

15 (b)

16 (2) The limitations imposed by Section 377.34 of the Code of
17 Civil Procedure on the damages recoverable shall not apply.
18 However, the damages recovered shall not exceed the damages
19 permitted to be recovered pursuant to subdivision (b) of Section
20 3333.2 of the Civil Code.

21 (c)

22 (3) The standards set forth in subdivision (b) of Section 3294
23 of the Civil Code regarding the imposition of punitive damages
24 on an employer based upon the acts of an employee shall be
25 satisfied before any punitive damages may be imposed against an
26 employer found liable for physical abuse, as defined by Section
27 15610.63, or neglect, as defined by Section 15610.57. This
28 subdivision shall not apply to the recovery of compensatory
29 damages or the award of attorney's fees and costs.

1 ***(b) The changes made to this Section by SB 558 of the 2011-12***
2 ***Session are not intended to affect the standard of proof for punitive***
3 ***damages pursuant to Section 3294 of the Civil Code.***

O