

Assembly Bill No. 859

Passed the Assembly September 13, 2017

Chief Clerk of the Assembly

Passed the Senate September 6, 2017

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2017, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 15657 of, and to add Section 15657.02 to, the Welfare and Institutions Code, relating to elders and dependent adults.

LEGISLATIVE COUNSEL'S DIGEST

AB 859, Eggman. Elders and dependent adults: abuse or neglect.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, 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 the defendant is liable for physical abuse or neglect, and the defendant has also been found guilty of recklessness, oppression, fraud, or malice in the commission of that abuse.

This bill would instead apply a preponderance of the evidence standard to any claim brought against a residential care facility for the elderly or a skilled nursing facility, except as specified, for remedies sought pursuant to the above provisions, upon circumstances in which spoliation of evidence has been committed by the defendant, as specified. The bill would make conforming changes to a related provision.

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

SECTION 1. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. If it is proven by clear and convincing evidence, or by a preponderance of the evidence pursuant to Section 15657.02, that a defendant is liable for physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

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

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

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

SEC. 2. Section 15657.02 is added to the Welfare and Institutions Code, to read:

15657.02. (a) Notwithstanding any other law, the standard of evidence in any claim for remedies sought under Section 15657 shall be a preponderance of the evidence under either of the following circumstances:

(1) The plaintiff prevails on a discovery motion pursuant to subdivision (b) of Section 2023.030 of the Code of Civil Procedure due to spoliation of evidence by the defendant.

(2) A judge or arbitrator determines at any point during litigation or arbitration that spoliation of evidence has been committed by the defendant.

(b) (1) This section applies only to claims brought against a residential care facility licensed pursuant to the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code), or a skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code, except as otherwise provided in paragraph (2).

(2) This section does not apply to either of the following:

(A) A facility owned or operated by a general acute care hospital, as defined in subdivision (a) of, an acute psychiatric hospital, as defined in subdivision (b) of, or a special hospital, as defined in subdivision (f) of, Section 1250 of, and licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of, the Health and Safety Code.

(B) A facility that holds a valid license issued pursuant to subdivision (b) or (c) of Section 1254 of the Health and Safety Code.

(c) For purposes of this section, “spoliation of evidence” means the intentional concealment or destruction of evidence that is done by a party, with the intent of preventing the evidence from being produced, and that has materially prejudiced the other party.

(d) For purposes of this section, the evidence that is the subject of the spoliation shall be material to the claim brought under this article and specifically required to be maintained or preserved by the defendant under applicable law or regulation.

(e) Nothing in this section modifies the standard of evidence for cases brought under Section 15657.03.

Approved _____, 2017

Governor