

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 introduced, Simitian. Elder and dependent adults: abuse or neglect: damages.

Existing law provides for the award of attorney's fees and costs, and damages, to 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.

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. Where it is proven by ~~clear and convincing a~~
4 *preponderance of the* evidence that a defendant is liable for
5 physical abuse as defined in Section 15610.63, or neglect as defined
6 in Section 15610.57, and that the defendant has been guilty of
7 recklessness, oppression, fraud, or malice in the commission of

1 this abuse, the following shall apply, in addition to all other
2 remedies otherwise provided by law:

3 (a) The court shall award to the plaintiff reasonable attorney’s
4 fees and costs. ~~The term “costs”~~ “Costs” includes, but is not
5 limited to, reasonable fees for the services of a conservator, if any,
6 devoted to the litigation of a claim brought under this article.

7 (b) The limitations imposed by Section 377.34 of the Code of
8 Civil Procedure on the damages recoverable shall not apply.
9 However, the damages recovered shall not exceed the damages
10 permitted to be recovered pursuant to subdivision (b) of Section
11 3333.2 of the Civil Code.

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