

AMENDED IN SENATE APRIL 4, 2011

**SENATE BILL**

**No. 558**

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**Introduced by Senator Simitian**

February 17, 2011

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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, to* 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.*

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

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

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

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

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2 **CORRECTIONS:**  
3 **Digest—Page 1.**  
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