

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 381**

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**Introduced by Assembly Member Chau**

February 14, 2013

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An act to amend Sections 859 and 4231.5 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 381, as amended, Chau. Estates and trusts: undue influence and elder abuse.

(1) Existing law provides that a person found liable for taking, concealing, or disposing of property belonging to the estate of a decedent, conservatee, minor, or trust through the use of undue influence in bad faith, or through the commission of elder or dependent adult financial abuse, is liable for twice the value of the property. *Existing law provides that this remedy is additional to any other remedy available at law.*

This bill would also provide for this person's liability for reasonable attorney's fees and costs. *The bill would specifically apply these provisions to property belonging to an elder or a dependent adult.*

(2) Existing law provides that a person who, in bad faith, wrongfully takes, conceals, or disposes of property belonging to a principal under a power of attorney is liable for twice the value of the property recovered by an action to recover the property or for surcharge.

This bill would extend this liability to a person who has taken, concealed, or disposed of property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined. The bill would also provide for liability for reasonable

attorney’s fees and costs under these provisions and those described above.

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 859 of the Probate Code is amended to  
2 read:

3 859. If a court finds that a person has in bad faith wrongfully  
4 taken, concealed, or disposed of property belonging to ~~the estate~~  
5 ~~of a decedent~~, a conservatee, a minor, ~~or an elder~~, a dependent  
6 adult, a trust, or *the estate of a decedent*, or has taken, concealed,  
7 or disposed of the property by the use of undue influence in bad  
8 faith or through the commission of elder or dependent adult  
9 financial abuse, as defined in Section 15610.30 of the Welfare and  
10 Institutions Code, the person shall be liable for twice the value of  
11 the property recovered by an action under this part and shall also  
12 be liable for reasonable attorney’s fees and costs. The remedies  
13 provided in this section shall be in addition to any other remedies  
14 available in law to a trustee, guardian or conservator, ~~or~~ personal  
15 representative or other successor in interest of a decedent, *or a*  
16 *person authorized to bring an action pursuant to the Elder Abuse*  
17 *and Dependent Adult Civil Protection Act (Chapter 11*  
18 *(commencing with Section 15600) of Part 3 of Division 9 of the*  
19 *Welfare and Institutions Code).*

20 SEC. 2. Section 4231.5 of the Probate Code is amended to  
21 read:

22 4231.5. (a) If the attorney-in-fact breaches a duty pursuant to  
23 this division, the attorney-in-fact is chargeable with any of the  
24 following, as appropriate under the circumstances:

25 (1) Any loss or depreciation in value of the principal’s property  
26 resulting from the breach of duty, with interest.

27 (2) Any profit made by the attorney-in-fact through the breach  
28 of duty, with interest.

29 (3) Any profit that would have accrued to the principal if the  
30 loss of profit is the result of the breach of duty.

31 (b) If the attorney-in-fact has acted reasonably and in good faith  
32 under the circumstances as known to the attorney-in-fact, the court,  
33 in its discretion, may excuse the attorney-in-fact in whole or in

1 part from liability under subdivision (a) if it would be equitable  
2 to do so.

3 (c) If a court finds that a person has in bad faith wrongfully  
4 taken, concealed, or disposed of property belonging to a principal  
5 under a power of attorney, or has taken, concealed, or disposed of  
6 property by the use of undue influence in bad faith or through the  
7 commission of elder or dependent adult financial abuse, as defined  
8 in Section 15610.30 of the Welfare and Institutions Code, the  
9 person shall be liable for twice the value of the property recovered  
10 by an action to recover the property or for surcharge and shall also  
11 be liable for reasonable attorney's fees and costs. The remedies  
12 provided in this section shall be in addition to any other remedies  
13 available in law to the principal or any successor in interest of the  
14 principal.

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