

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 381

Introduced by Assembly Member Chau

February 14, 2013

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~~ *permit a court to award* reasonable attorney's fees and costs *in these actions, except as specified*. The bill would specifically apply these provisions to property belonging to an elder or a dependent adult. *The bill would make technical changes with regard to the nonexclusive character of the remedy provided.*

(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~~ *permit a court to award* reasonable attorney’s fees and costs under these provisions and those described above, *except as specified*.

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 a
 5 conservatee, a minor, an elder, a dependent adult, a trust, or the
 6 estate of a decedent, or has taken, concealed, or disposed of the
 7 property by the use of undue influence in bad faith or through the
 8 commission of elder or dependent adult financial abuse, as defined
 9 in Section 15610.30 of the Welfare and Institutions Code, the
 10 person shall be liable for twice the value of the property recovered
 11 by an action under this part ~~and shall also be liable for reasonable~~
 12 ~~attorney’s fees and costs.~~ *Except as otherwise required by law,*
 13 *including Section 15657.5 of the Welfare and Institutions Code,*
 14 *a court may, in its discretion, award reasonable attorney’s fees*
 15 *and costs to the prevailing party.* The remedies provided in this
 16 section shall be in addition to any other remedies available in law
 17 ~~to a trustee, guardian or conservator, personal representative or~~
 18 ~~other successor in interest of a decedent, or a person authorized to~~
 19 ~~bring an action pursuant to the Elder Abuse and Dependent Adult~~
 20 ~~Civil Protection Act (Chapter 11 (commencing with Section 15600)~~
 21 ~~of Part 3 of Division 9 of the Welfare and Institutions Code) this~~
 22 *part.*

23 SEC. 2. Section 4231.5 of the Probate Code is amended to
 24 read:

25 4231.5. (a) If the attorney-in-fact breaches a duty pursuant to
 26 this division, the attorney-in-fact is chargeable with any of the
 27 following, as appropriate under the circumstances:

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

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

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

7 (b) If the attorney-in-fact has acted reasonably and in good faith
8 under the circumstances as known to the attorney-in-fact, the court,
9 in its discretion, may excuse the attorney-in-fact in whole or in
10 part from liability under subdivision (a) if it would be equitable
11 to do so.

12 (c) If a court finds that a person has in bad faith wrongfully
13 taken, concealed, or disposed of property belonging to a principal
14 under a power of attorney, or has taken, concealed, or disposed of
15 property by the use of undue influence in bad faith or through the
16 commission of elder or dependent adult financial abuse, as defined
17 in Section 15610.30 of the Welfare and Institutions Code, the
18 person shall be liable for twice the value of the property recovered
19 by an action to recover the property or for surcharge ~~and shall also~~
20 ~~be liable for reasonable attorney's fees and costs.~~ *Except as*
21 *otherwise required by law, including Section 15657.5 of the*
22 *Welfare and Institutions Code, a court may, in its discretion, award*
23 *reasonable attorney's fees and costs to the prevailing party.* The
24 remedies provided in this section shall be in addition to any other
25 remedies available in law to the principal or any successor in
26 interest of the principal.

O