

AMENDED IN SENATE MAY 24, 2013

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 ~~permit a court to award~~ *provide that a person may, in the court's discretion, be liable for* 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 ~~permit a court to award~~ *provide that a person may, in the court's discretion, be liable for* 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. ~~Except~~ *In addition, except* as otherwise
12 required by law, including Section 15657.5 of the Welfare and
13 Institutions Code, ~~a court may, in its~~ *the person may, in the court's*
14 ~~discretion, award~~ *discretion, be liable for* reasonable attorney's fees and costs
15 ~~to the prevailing party.~~ The remedies provided in this section shall
16 be in addition to any other remedies available in law to a person
17 authorized to bring an action pursuant to this part.

18 SEC. 2. Section 4231.5 of the Probate Code is amended to
19 read:

20 4231.5. (a) If the attorney-in-fact breaches a duty pursuant to
21 this division, the attorney-in-fact is chargeable with any of the
22 following, as appropriate under the circumstances:

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

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

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

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

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