

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1343

Introduced by Senator Wyland

February 21, 2014

An act to amend Section ~~15657.5~~ 487.010 of the ~~Welfare and Institutions Code~~, *Code of Civil Procedure*, relating to ~~financial abuse~~: *civil procedure*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1343, as amended, Wyland. ~~Financial abuse. Civil procedure:~~ *property subject to attachment.*

Existing law, known as the Attachment Law, authorizes a plaintiff to use the remedy of attachment against a defendant's property to secure the amount of the claimed indebtedness to the plaintiff and specifies the property of the defendant that is subject to attachment. The Elder Abuse and Dependent Adult Civil Protection Act authorizes an attachment to be issued in any action for damages for financial abuse of an elder or dependent adult, as specified.

This bill would provide that, if an attachment is issued in an action for damages for financial abuse of an elder or dependent adult, any property of the defendant would be subject to attachment.

~~The Elder Abuse and Dependent Adult Civil Protection Act authorizes compensatory damages and other relief for an elder or dependent adult who suffers financial abuse. The act defines financial abuse as, among other actions, taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. Existing law also requires a court to award to the elder or dependent adult reasonable attorney's fees and costs.~~

~~This bill would make technical, nonsubstantive changes to the latter provision.~~

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 487.010 of the Code of Civil Procedure
2 is amended to read:
3 487.010. The following property of the defendant is subject to
4 attachment:
5 (a) ~~Where~~*If* the defendant is a corporation, all corporate
6 property for which a method of levy is provided by Article 2
7 (commencing with Section 488.300) of Chapter 8.
8 (b) ~~Where~~*If* the defendant is a partnership or other
9 unincorporated association, all partnership or association property
10 for which a method of levy is provided by Article 2 (commencing
11 with Section 488.300) of Chapter 8.
12 (c) ~~Where~~*If* the defendant is a natural person, all of the
13 following property:
14 (1) Interests in real property except leasehold estates with
15 unexpired terms of less than one year.
16 (2) Accounts receivable, chattel paper, and general intangibles
17 arising out of the conduct by the defendant of a trade, business, or
18 profession, except any ~~such~~ individual claim with a principal
19 balance of less than one hundred fifty dollars (\$150).
20 (3) Equipment.
21 (4) Farm products.
22 (5) Inventory.
23 (6) Final money judgments arising out of the conduct by the
24 defendant of a trade, business, or profession.
25 (7) Money on the premises where a trade, business, or profession
26 is conducted by the defendant and, except for the first one thousand
27 dollars (\$1,000), money located elsewhere than on ~~such~~ *the*
28 premises and deposit accounts, but, if the defendant has more than
29 one deposit account or has at least one deposit account and money
30 located elsewhere than on the premises where a trade, business,
31 or profession is conducted by the defendant, the court, upon
32 application of the plaintiff, may order that the writ of attachment
33 be levied so that an aggregate amount of one thousand dollars

1 (\$1,000) in the form of ~~such~~ money and in ~~such~~ *the* accounts
2 remains free of levy.

3 (8) Negotiable documents of title.

4 (9) Instruments.

5 (10) Securities.

6 (11) Minerals or the like (including oil and gas) to be extracted.

7 *(d) In the case of an attachment issued pursuant to Section*
8 *15657.01 of the Welfare and Institutions Code, any property of*
9 *the defendant.*

10 ~~(d)~~

11 *(e)* In the case of a defendant described in subdivision (c),
12 community property of a type described in subdivision (c) is subject
13 to attachment if the community property would be subject to
14 enforcement of the judgment obtained in the action in which the
15 attachment is sought. Unless the provision or context otherwise
16 requires, if community property that is subject to attachment is
17 sought to be attached:

18 (1) Any provision of this title that applies to the property of the
19 defendant or to obligations owed to the defendant also applies to
20 the community property interest of the spouse of the defendant
21 and to obligations owed to either spouse that are community
22 property.

23 (2) Any provision of this title that applies to property in the
24 possession or under the control of the defendant also applies to
25 community property in the possession or under the control of the
26 spouse of the defendant.

27 ~~SECTION 1. Section 15657.5 of the Welfare and Institutions~~
28 ~~Code is amended to read:~~

29 ~~15657.5. (a) Where it is proven by a preponderance of the~~
30 ~~evidence that a defendant is liable for financial abuse, as defined~~
31 ~~in Section 15610.30, in addition to compensatory damages and all~~
32 ~~other remedies otherwise provided by law, the court shall award~~
33 ~~to the plaintiff reasonable attorney's fees and costs. The term~~
34 ~~"costs" includes, but is not limited to, reasonable fees for the~~
35 ~~services of a conservator, if any, devoted to the litigation of a claim~~
36 ~~brought under this article.~~

37 ~~(b) Where it is proven by a preponderance of the evidence that~~
38 ~~a defendant is liable for financial abuse, as defined in Section~~
39 ~~15610.30, and where it is proven by clear and convincing evidence~~
40 ~~that the defendant has been guilty of recklessness, oppression,~~

1 ~~fraud, or malice in the commission of the abuse, in addition to~~
2 ~~reasonable attorney's fees and costs pursuant to in subdivision (a),~~
3 ~~compensatory damages, and all other remedies otherwise provided~~
4 ~~by law, the limitations imposed by Section 377.34 of the Code of~~
5 ~~Civil Procedure on the damages recoverable shall not apply.~~
6 ~~(e) The standards set forth in subdivision (b) of Section 3294~~
7 ~~of the Civil Code regarding the imposition of punitive damages~~
8 ~~on an employer based upon the acts of an employee shall be~~
9 ~~satisfied before any punitive damages may be imposed against an~~
10 ~~employer found liable for financial abuse as defined in Section~~
11 ~~15610.30. This subdivision shall not apply to the recovery of~~
12 ~~compensatory damages or attorney's fees and costs.~~
13 ~~(d) Nothing in this section affects the award of punitive damages~~
14 ~~under Section 3294 of the Civil Code.~~
15 ~~(e) Any money judgment in an action under this section shall~~
16 ~~include a statement that the damages are awarded based on a claim~~
17 ~~for financial abuse of an elder or dependent adult, as defined in~~
18 ~~Section 15610.30. If only part of the judgment is based on that~~
19 ~~claim, the judgment shall specify what amount was awarded on~~
20 ~~that basis.~~