
THIRD READING

Bill No: AB 251
Author: Kalra (D)
Amended: 6/23/25 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 6/17/25

AYES: Umberg, Allen, Arreguín, Caballero, Durazo, Laird, Stern, Wahab, Weber
Pierson, Wiener

NO VOTE RECORDED: Niello, Ashby, Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25

AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab

NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 57-8, 4/1/25 - See last page for vote

SUBJECT: Elders and dependent adults: abuse or neglect

SOURCE: California Advocates for Nursing Home Reform;
Consumer Attorneys of California

DIGEST: This bill permits a judge to reduce the burden of proof, from clear and convincing evidence to preponderance of the evidence, in a civil action filed against specified facilities under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), when the court has found that the defendant committed spoliation of evidence and other specified conditions are met.

ANALYSIS:

Existing law:

- 1) Establishes the EADACPA, which is intended, among other things, to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults. (Welfare and Institutions Code (Welf. & Inst. Code), div. 9, pt. 3, ch. 11, §§ 15600 et seq.)

2) Defines the following relevant terms:

- a) “Abandonment” means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody. (Welf. & Inst. Code, § 15610.5.)
- b) “Elder” means any person residing in this state who is 65 years of age or older. (Welf. & Inst. Code, § 15610.27.)
- c) “Neglect” means either the negligent failure of any person having the care or custody of an elder or dependent adult to exercise that degree of care that a reasonable person in a like position would exercise, or the negligent failure of an elder or dependent adult to exercise that degree of self-care that a reasonable person in a like position would exercise, and includes specified acts. (Welf. & Inst. Code, § 15610.57.)
- d) “Physical abuse” includes assault, battery, unreasonable physical constraint or prolonged continual deprivation of food or water, sexual assault, and unwarranted or unauthorized use of physical restraints, chemical restraints, or psychotropic medication. (Welf. & Inst. Code, § 15610.63.)

3) Provides that, where it is proven by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or abandonment, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, the following shall apply, in addition to all other remedies otherwise provided by law:

- a) The court shall award to the plaintiff reasonable attorney fees and costs; “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim, as specified.
- b) The limitations imposed on recovering damages for a decedent under Code of Civil Procedure section 337.34 do not apply in the action; however, the damages recovered shall not exceed the damages permitted to be recovered under the Medical Injury Compensation Reform Act of 1975 (MICRA) (Civ. Code, § 3333.2).
- c) The standards set forth in Civil Code section 3294(b) regarding the imposition of punitive damages on an employer based on the acts of an employee shall be satisfied before any damages or attorney fees permitted under 3)(a) shall be imposed against an employer. (Welf. & Inst. Code, § 15657.)

- 4) Provides that, notwithstanding 3), any cause of action for injury or damage against a health care provider, as defined, based on the health care provider's alleged professional negligence shall be governed by those laws which specifically apply to those professional negligence causes of action. (Welf. & Inst. Code, § 15657.2.)
- 5) Provides that a plaintiff may recover punitive damages, in an action for the breach of an obligation not arising under a contract, when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294.)
- 6) Establishes the Civil Discovery Act, which sets forth the procedures for, and sanctions for the misuse of, discovery in civil cases. (Code Civ. Proc., pt. 4, tit. 4, §§ 2016 et seq.)
- 7) Provides that misuses of the civil discovery process include:
 - a) Failing to respond or to submit to an authorized method of discovery.
 - b) Making, without substantial justification, an unmeritorious objection to discovery.
 - c) Making an evasive response to discovery.
 - d) Disobeying a court order to provide discovery. (Code Civ. Proc., § 2023.010.)
- 8) Permits a court, after notice and an opportunity for hearing, to impose specified sanctions against anyone engaging in conduct that is a misuse of the discovery process, including monetary sanctions, evidentiary sanctions, and terminating sanctions. (Welf. & Inst. Code, § 2023.030.)
- 9) Permits a finder of fact to draw a negative inference against a party's willful suppression of evidence. (Evid. Code, § 413.)

This bill:

- 1) Permits the court to determine the standard of evidence, in any claim for remedies sought in an EADACPA civil action, to be a preponderance of the evidence, under either of the following circumstances:
 - a) The plaintiff prevails on a motion under the Civil Discovery Act arguing that the defendant misused the discovery process, as specified, due to spoliation of evidence by the defendant.

- b) A judge or arbitrator determines at any point during litigation or arbitration that spoliation of evidence has been committed by the defendant.
- 2) Requires a court that determines that the standard of evidence shall be a preponderance of the evidence under 1) to issue its findings in writing.
 - 3) Provides that the standard of evidence may be lowered under 1) only in claims brought against a residential care facility, an adult community care facility, or a skilled nursing facility, as defined, except for a facility owned or operated by a licensed general acute care hospital, acute psychiatric hospital, or special hospital, as defined, or a freestanding facility operated by a licensed acute care hospital providing basic services, as defined.
 - 4) Provides that, for purposes of 1), “spoliation of evidence” means the intentional improper alteration of evidence or the intentional concealment or destruction of records, documents, or other evidence that is done by a party, with the intent of preventing the evidence from being produced, and that has materially prejudiced the other party.
 - 5) Provides that a judge, in determining whether spoliation has occurred under 1), shall consider whether records, documents, or other evidence is intentionally destroyed in any of the following manners:
 - a) Prior to the expiration of a legally required time period for holding the records, documents, or other evidence.
 - b) In contravention of the party’s written records retention policy.
 - c) After receipt of a written directive to preserve relevant records, documents, or other evidence.
 - 6) Provides, that, for purposes of 1), the records, documents, or other evidence that is the subject of the spoliation must be material to the EADACPA claim and specifically required to be maintained or preserved by the defendant.
 - 7) Provides that 1)-9) do not modify the standards for obtaining an EADACPA protective order, as specified, and that the remedy provided is cumulative with any other remedy available by law.
 - 8) States that the Legislature finds and declares that facilities described in 3) have an existing duty to refrain from committing spoliation of evidence in EADACPA civil actions and, therefore, 1)-9) do not impose a new requirement

on those facilities that is reimbursable under specified Medi-Cal or California Medicaid State Plan laws or regulations.

- 9) Provides that, if there is a final judicial determination in any action by any party, or a final determination by the Centers for Medicare and Medicaid Services, that the state is required by state or federal law or regulation to provide reimbursement under the Medi-Cal program to the health care facilities described in 3) for costs associated with 1)-8), and the Legislature does not appropriate sufficient funds to pay for those costs, 1)-8) shall become inoperative.

Comments

The EADACPA establishes a number of standards and protections for elder and dependent adults who, as a result of their reliance on third parties, are left uniquely vulnerable to abuse. One such provision permits a party who brings a claim of abuse of an elder or dependent adult on behalf of the victim to recover attorney's fees and costs, as well as compensatory damages for the elder or dependent adult's pain and suffering (subject to statutory limits), and punitive damages, if the party can show, by clear and convincing evidence, that the defendant was guilty of recklessness, oppression, fraud, or malice in committing the abuse. The clear and convincing evidence standard of proof established in this case is a higher burden than the "preponderance of the evidence" standard in most civil actions.

According to the author and sponsors of this bill, claims under the EADACPA private right of action frequently face another hurdle: deliberate spoliation of evidence by the defendant. Spoliation—the deliberate destruction, alteration, or concealment of evidence—effectively prevents a party from having their fair day in court by depriving them of the evidence they need to make their case.

According to the author and sponsors, spoliation is especially harmful in EADACPA cases because the facilities' records are often necessary to establish that the abuse occurred, particularly in cases where the elder or dependent adult has passed away.

This bill gives the court the discretion to lower the burden of proof for an EADACPA claim against a skilled nursing facility or residential care facility when the court finds that the facility has deliberately spoliated material evidence that it was required to maintain, with the intent of preventing the other party from obtaining the evidence, and that the spoliation materially prejudiced the other party. This bill does not prevent the court from imposing any existing sanctions for the misuse of the discovery process in lieu of lowering the burden of proof.

This bill is similar to AB 2773 (Kalra, 2024), except that AB 2773 required, rather than permitted, a judge to lower the burden of proof upon a finding that the defendant spoliated evidence. Governor Newsom vetoed AB 2773, stating in his veto message that “we should not completely remove a judge's discretion to craft appropriate remedies in response to spoliation. A more nuanced approach would be to specify that a judge may reduce the standard of proof under these circumstances.”¹ Because this bill grants the court such discretion, it appears responsive to the Governor’s concerns.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, the fiscal impact is as follows:

- Medi-Cal: Unknown, potentially significant costs (General Fund, federal funds). The Medi-Cal program individually reimburses certain health care facilities on a cost-basis for the care they provide to Medi-Cal beneficiaries. Lowering the standard of proof in elder abuse cases, as proposed by this bill, makes it more likely that plaintiffs will prevail, defendant-facilities will incur related legal costs, increased liability, and their professional liability insurance may increase. These costs would be captured in the individual cost reports the Department of Health Care Services uses to calculate facility-specific Medi-Cal reimbursement rates. Professional liability insurance costs for providers are reported as a separate line item, and feed directly into the rate. Some of these increased costs may be borne by the state through Medi-Cal.

According to the Assembly Committee on Appropriations and Department of Finance analyses of a substantially similar bill², this bill is likely to result in a one to one-and-a-half percent increase in reimbursed personal liability insurance on a base of approximately \$65 million for skilled nursing facilities. This range translates to increased annual costs of \$650,000 to \$975,000, split evenly between General Fund and Federal Trust Fund.

- Trial Courts: Unknown, potentially significant cost to the state funded trial court system (Trial Court Trust Fund, General Fund). Lowering the standard of proof will increase the likelihood for success for elder abuse plaintiffs to prove their cases, which may lead to additional case filings that otherwise may not have been commenced. Additionally, requiring the courts to issue their findings in writing, as required by this bill, could lead to lengthier and more complex

¹ Governor’s veto message to Assem. on Assem. Bill No. 2773 (Sept. 29, 2024) Recess. J. No. 28 (2023-2024 Reg. Sess.) p. 7291.

² AB 859 (Eggman) of the 2017-18 Legislative Session.

court proceedings with attendant workload and resource costs to the court. Even in cases where spoliation cannot be proved, if spoliation is alleged, it could result in increased legal defense costs to defend against such motions.

- The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations. The Governor's 2025-26 budget proposes a \$40 million ongoing increase in discretionary funding from the General Fund to help pay for increased trial court operation costs beginning in 2025-26. The May Revision includes total funding of \$5.2 billion (\$3.2 billion General Fund) in 2025-26 for the Judicial Branch, of which \$2.9 billion is provided to support trial court operations. The Budget Act of 2025 provides \$82 million General Fund to account for trial court operations.

SUPPORT: (Verified 8/29/25)

California Advocates for Nursing Home Reform (co-source)

Consumer Attorneys of California (co-source)

AARP California

Association of Regional Center Agencies

California Collaborative for Long-Term Services and Supports

California Commission on Aging

California Continuing Care Residents Association

California Elder Justice Coalition

California Long-Term Care Ombudsman Association

California Geriatric Circle

California Retired Teachers Association

Elder Law & Advocacy

Justice in Aging

Retired Public Employees Association

OPPOSITION: (Verified 8/29/25)

California Assisted Living Association

Civil Justice Association of California

ARGUMENTS IN SUPPORT: According to CANHR:

Since the Elder and Dependent Adult Civil Protection Act was passed in 1991, CANHR has found that the plaintiffs' extraordinarily high burden of proof gives defendants an unfair advantage since victims may be dead or have a cognitive impairment, turning control of a case's narrative to the defendants' records, charts, and employees. The integrity of evidence is particularly crucial in cases against long term care facilities, where the only witnesses to the wrongdoing are often facility staff who are concerned about their job security and unwilling to testify.

Over the last decade or so, electronic health records and communication have become prolific and given long term care providers new opportunities to destroy, conceal, or fraudulently alter records. Spoliation of electronic health care records is extremely difficult to detect, requiring time consuming and expensive audit trail reviews to examine every key punch in a resident's record. Neither DPH nor DSS have staff who can undertake audit trail reviews and thus falsification of records is increasingly undetected. The prevalence of spoliation is very likely increasing due to the diminished efficacy of regulator oversight.

AB 251 allows a judge to lower the burden of proof in an elder abuse case from "clear and convincing" to "preponderance of the evidence" if they find that the defendant intentionally engaged in spoliation of evidence. This will discourage nursing homes and assisted living facilities from intentionally destroying or concealing crucial evidence in civil elder abuse cases. Lowering the burden of proof in these special cases will help ensure defendants don't tip the scales of justice by falsifying evidence.

ARGUMENTS IN OPPOSITION: According to the Civil Justice Association of California:

While we agree the elderly should be protected, we believe lowering the standard of proof is unwarranted because it could result in a significant upturn in the litigation burden for businesses and courts and lead to higher operating costs for healthcare providers and more expensive and fewer available services for the elderly, at a time when the elderly population is growing in this state and increasingly in need of costly services.

AB 251 proposes to make the lower evidentiary standard available if there has been a finding that a defendant has destroyed or altered evidence. Such a finding is very serious, yet what AB 251 proposes is unwarranted because, under current law, there are ample remedies available to plaintiffs. These include monetary penalties and sanctions under Code of Civil Procedure Section 2023.030 and permitting juries to consider conduct in their decision-making under CACI jury instruction 204.

Additionally, judges already have appropriate discretion for dealing with motions for spoliation that range from warnings, monetary fines, issue preclusion, terminating sanctions, and directed verdicts.

ASSEMBLY FLOOR: 57-8, 4/1/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Solache, Soria, Stefani, Valencia, Ward, Wilson, Zbur, Rivas

NOES: Chen, DeMaio, Ellis, Essayli, Gallagher, Hadwick, Tangipa, Wallis

NO VOTE RECORDED: Alvarez, Castillo, Davies, Dixon, Flora, Jeff Gonzalez, Hoover, Lackey, Macedo, Patterson, Michelle Rodriguez, Sanchez, Sharp-Collins, Ta, Wicks

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
8/29/25 20:27:49

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