

## CONCURRENCE IN SENATE AMENDMENTS

AB 251 (Kalra)

As Amended June 23, 2025

Majority vote

**SUMMARY**

Authorizes a court to reduce the standard of proof required to prove abuse, abandonment, or neglect of an elder or dependent adult in a civil action from clear and convincing evidence, to preponderance of the evidence, under specified circumstances in cases where the defendant has engaged in spoliation of the evidence substantiating the abuse.

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**Major Provisions**

- 1) Provides that notwithstanding any other law, the court may determine the standard of evidence required to prove elder or dependent adult physical abuse, abandonment, or neglect in cases brought against residential care facilities for the elderly (RCFEs) and skilled nursing facilities (SNFs) in any claim under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) to be a preponderance of the evidence in either of the following circumstances:
  - a) The plaintiff prevails on a discovery motion pursuant to subdivision (b) of Section 2023.030 of the Code of Civil Procedure 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 the court to issue its findings under 1) in writing.
- 3) Clarifies that 1) applies only to claims brought against a residential care facility licensed pursuant to the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code), *an adult community care facility licensed pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code)*, or a skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code, except as otherwise provided in paragraph (2).
- 4) Clarifies that 1), above, does not apply to either of the following:
  - a) A facility owned or operated by a general acute care hospital, an acute psychiatric hospital, or a special hospital.
  - b) A facility that holds a valid license allowing for its beds to be separately housed from an acute psychiatric hospital, or a special hospital.

- 5) Defines, for purposes of the bill, "spoliation of evidence" to mean "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."
- 6) Requires a judge, in determining whether spoliation of evidence has occurred, to 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.
- 7) Clarifies that, for purposes of the bill, the records, documents, or other evidence that is the subject of the spoliation shall be material to the claim brought under this article and specifically required to be maintained or preserved by the defendant.
- 8) Clarifies that the bill does not modify the standard of evidence for cases seeking a protective order to protect an elder or dependent adult from abuse.
- 9) States that the remedy provided in this bill is cumulative with any other remedy available by law.
- 10) States that the Legislature hereby finds and declares that the facilities that are subject to the bill have an existing duty to refrain from committing spoliation of evidence in actions brought under the EADACPA and, therefore, the bill does not impose a new requirement on those facilities that is reimbursable pursuant to any law or regulation governing Medi-Cal ratesetting, or the California Medicaid State Plan.
- 11) 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 subject to the bill for costs associated with the bill, and the Legislature does not appropriate sufficient funds to pay for those costs, this bill shall become inoperative.

### **Senate Amendments**

Add adult community care facilities licensed pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code) to the application of the bill.

### **COMMENTS**

This bill, co-sponsored by Consumer Attorneys of California and California Advocates for Nursing Home Reform, seeks to deter the abuse, abandonment, and neglect of elders, as well as the destruction of evidence of such heinous acts, by reducing the unusually high standard of

proof that generally is applicable to elder abuse cases when an unusual act occurs. The bill gives a court discretion to reduce the standard of proof to the default standard in civil cases of preponderance of the evidence when the court finds that the defendant has engaged in spoliation of evidence. Given that the standard of proof is only reduced from clear and convincing evidence (which is unusually high for civil cases) to preponderance of the evidence in these exceptional circumstances, and only when the abuse, abandonment, and neglect is perpetrated by custodians of the elder who provide care in a residential care facility for the elderly (RCFE) or a skilled nursing facility (SNF), the bill has a quite narrow and limited application.

*This bill and how it differs from prior similar legislation.* Like numerous prior attempts to address the dual problems of a high standard of proof for elder abuse cases and spoliation of evidence (see list of prior similar legislation, below), this bill seeks to better protect elder and dependent adults—and to deter both abuse and destruction of evidence of abuse--by making a relatively modest change to the evidentiary standard necessary to prove physical abuse, abandonment, or neglect. According to the author and co-sponsors, some nursing home defendants often hold all or most of the evidence necessary to prove the claim of elder abuse, but purposefully destroy evidence and thereby make the victim's case—hard enough to begin with because of the clear and convincing evidentiary requirement—even more difficult to prove.

Like prior legislation, this bill does not alter the *elements* of an EADACPA case that must be proved in order to establish physical abuse, abandonment, or neglect of an elder or dependent adult. Like prior legislation, the bill only seeks to lower the standard of proof for those elements, from clear and convincing evidence to preponderance of the evidence, in cases where spoliation has occurred.

While past legislative efforts *required* a lower standard of proof when a court found that spoliation of evidence had occurred, this bill does not make the reduction mandatory. Instead, as suggested by the Governor in his veto message regarding AB 2773 (2023-24), the bill gives discretion to a court to reduce the standard of proof, from clear and convincing to preponderance of the evidence, when it finds that the defendant engaged in spoliation. *The bill clarifies both of the following in regard to spoliation:* (1) what "spoliation of evidence" means; and (2) what evidence a court must consider in order to determine whether spoliation has occurred.

Further limiting the reach of this legislation, the bill, like AB 2773, applies only to claims brought against a residential care home for the elderly (RCFE) or a skilled nursing facility (SNF). It does not apply, by its own terms, to hospitals or facilities owned by hospitals. Like AB 2773, the bill includes language to make it inoperative if costs imposed to nursing homes by the bill are not reimbursed under the Medi-Cal program:

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 subject to the bill for costs associated with the bill, and the Legislature does not appropriate sufficient funds to pay for those costs, this bill shall become inoperative.

#### **According to the Author**

AB 251 gives abused elderly victims and their families a chance at justice after a skilled nursing facility or RCFE unscrupulously destroys evidence by giving the judge discretion to apply the *preponderance of the evidence* standard as the burden of proof. The bill is narrowly focused and only applies when a judge determines spoliation of evidence where the nursing

facility defendant intentionally and willfully destroys or conceals evidence that is material to the claim.

The civil justice system is often the only avenue to hold nursing facility operators directly accountable for elder abuse and to ensure these facilities are safer for all. California law, however, is weak in its treatment of spoliation, and a party may not be sued under a separate cause of action for the intentional destruction of evidence. The only remedy the court typically uses is a discretionary sanction or an instruction by the judge to the jury that it may consider whether one party intentionally concealed or destroyed evidence. AB 251 is needed to address this limited deterrence against spoliation of evidence and is fair to the victims of elder abuse.

### **Arguments in Support**

Co-sponsor California Advocates for Nursing Home Reform (CANHR) writes that the legislation is necessary, given the increasing incidence of records substantiating abuse being destroyed:

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.

Co-sponsor Consumer Attorneys of California describes why the bill will address these problems in a way that is fair and just:

The bill is narrowly focused and only applies when a judge determines spoliation of evidence where the nursing facility defendant intentionally and willfully destroy or conceals evidence that is material to the claim. This bill promotes justice, deters misconduct, and strengthens protections for seniors in care facilities.

### **Arguments in Opposition**

The Civil Justice Association of California writes that it opposes the bill because, in its opinion, the bill is both unnecessary (because other court remedies are available to a court in order to sanction spoliation of evidence) and excessive:

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 excessive because, under current law, there are ample remedies. 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 verdict. Moreover, consumers have robust protections under current elder abuse law, which provides for private, civil enforcement of claims and strong remedies including

awards of reasonable attorney's fees in addition to compensatory damages, as well as awards to surviving beneficiaries.

## FISCAL COMMENTS

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

- 1) 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 bill, 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.

- 2) 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 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.
- 3) 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.

**VOTES:****ASM JUDICIARY: 8-2-2**

**YES:** Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Papan, Stefani, Zbur

**NO:** Dixon, Essayli

**ABS, ABST OR NV:** Pacheco, Sanchez

**ASSEMBLY FLOOR: 57-8-15**

**YES:** 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

**NO:** Chen, DeMaio, Ellis, Essayli, Gallagher, Hadwick, Tangipa, Wallis

**ABS, ABST OR NV:** Alvarez, Castillo, Davies, Dixon, Flora, Jeff Gonzalez, Hoover, Lackey, Macedo, Patterson, Michelle Rodriguez, Sanchez, Sharp-Collins, Ta, Wicks

**SENATE FLOOR: 29-7-4**

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Choi, Dahle, Grove, Jones, Seyarto, Strickland

**ABS, ABST OR NV:** Niello, Ochoa Bogh, Reyes, Valladares

**UPDATED**

VERSION: June 23, 2025

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0001685