

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 251 (Kalra)
Version: March 19, 2025
Hearing Date: June 17, 2025
Fiscal: No
Urgency: No
AWM

SUBJECT

Elders and dependent adults: abuse or neglect

DIGEST

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

EXECUTIVE SUMMARY

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 sponsored by California Advocates for Nursing Home Reform (CANHR) and the Consumer Attorneys of California (CAOC) and is supported by AARP California, the Association of Regional Center Agencies, the California Commission on Aging, the California Continuing Care Residents Association, the California Elder Justice Coalition, the California Long-Term Care Ombudsman Association, California Geriatric Circle, the California Retired Teachers Association, and Elder Law & Advocacy. This bill is opposed by the Civil Justice Association of California.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act, 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. (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” means any of the following:
 - i. Assault, as defined in Penal Code section 240.
 - ii. Battery, as defined in Penal Code section 242.
 - iii. Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Penal Code section 245.

- iv. Unreasonable physical constraint or prolonged or continual deprivation of food or water.
 - v. Sexual assault, which includes specified crimes defined in the Penal Code.
 - vi. Use of a physical or chemical restraint or psychotropic medication for punishment, for a period beyond that for which the medication was ordered by a licensed professional, as specified, or for any purpose not authorized by the licensed professional. (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 4).
 - 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 an award of attorney fees under 3) shall be based on all factors relevant to the value of the services rendered, including:
 - a) The factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California.
 - b) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.
 - c) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.
 - d) The reasonableness and timeliness of any written offer in compromise made by a party to the action. (Welf. & Inst. Code, § 15657.1)
- 5) 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.)
- 6) 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.)

- 7) Provides that the damages limits in an action under 3) are subject to the following damages caps set forth in the Medical Injury Compensation Reform Act of 1975 (MICRA):
 - a) Civil liability for damages for noneconomic losses against one or more health care providers, collectively, shall not exceed \$390,000, regardless of the number of health care providers.
 - b) Civil liability for damages for noneconomic losses against one or more health care institutions, collectively, shall not exceed \$390,000, regardless of the number of health care institutions.
 - c) Civil liability for damages for noneconomic losses against one or more health care providers or health care institutions that are unaffiliated with an entity in (a) or (b) based on separate acts of professional negligence and that occurred at, or in relation to medical transport to, an unaffiliated health care institution, collectively, shall not exceed \$390,000, regardless of the number of defendants who satisfy these criteria. (Civ. Code, § 3333.2(b), (g).)
- 8) Provides that the dollar amounts in 7) shall increase by \$40,000 each January 1st for 10 years up to \$750,000, and shall be adjusted for inflation on January 1 of each year by 2 percent beginning on January 1, 2034. (Civ. Code, § 3333.2(g), (h).)
- 9) 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.)
- 10) 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.)
- 11) Permits a court, after notice and an opportunity for hearing, to impose sanctions against anyone engaging in conduct that is a misuse of the discovery process:
 - a) The court may impose a monetary sanction against the party misusing the discovery process or unsuccessfully alleging that a party misused the discovery process, or an attorney advising that conduct, to pay the reasonable expenses, including attorney fees, incurred by the conduct.
 - b) The court may impose an issue sanction ordering that designated facts shall be taken as established in accordance with the claim of the party adversely affected by the misuse of the discovery process, or by prohibiting any party

- engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.
- c) The court may impose an evidence sanction prohibiting any party misusing the discovery process from introducing designated matters in evidence.
 - d) The court may impose a terminating sanction by striking out parts of the pleadings of the party misusing the discovery process; staying further proceedings by that party until a discovery order is obeyed; dismissing the action, or part of the action, of that party; or rendering a judgment by default against that party.
 - e) The court may impose a contempt sanction by treating the misuse of the discovery process as a contempt of court.
 - f) Absent exceptional circumstances, the court shall not impose sanctions on a party or attorney for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system. (Welf. & Inst. Code, § 2023.030.)
- 12) 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 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

1. Author's comment

According to the author:

Unfortunately, some nursing homes intentionally destroy legal evidence after the abused person files a civil suit under the Elder Abuse & Dependent Adult Civil Protection Act. Even after such an illicit act by the facility, the elder or their family is still forced to prove abuse at the higher standard, but often cannot as the needed evidence was intentionally destroyed by the defendant facility. 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.

2. California's aging population and the EADACPA

California has a significant population of elder and dependent adults: the Office of the Attorney General estimates that about 110,000 Californians live in licensed nursing homes, 150,000 live in licensed residential care facilities for the elderly, and another 150,000 or more Californians live in unlicensed assisted living facilities that may or may not be able to provide adequate care.¹ California's population is also rapidly aging: the Department of Finance estimated that the number of Californians aged 65 and older would double between 2010 and 2030.² The number of adults who will rely on nursing homes or other long-term care will almost certainly increase as well.

According to the California Department of Aging, "more than 200,000 older and dependent adult abuse cases are reported in California each year, and it's believed that abuse of older adults is significantly under[-]reported."³

The EADACPA has been in place since 1982, in recognition of the fact that " 'dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect such persons.' " ⁴ The EADACPA has been amended many times in response to the ongoing prevalence of elder and dependent adult abuse,⁵ including adding an enhanced private right of action for damages against a person who

¹ Office of the Attorney General, Elder Abuse, <https://oag.ca.gov/dmfea/elder>. All links in this analysis are current as of June 12, 2025.

² *Ibid.*

³ California Department of Aging, Elder Abuse and Neglect, https://aging.ca.gov/Aging_Resources/Elder_Abuse_How_to_Spot_and_Help/.

⁴ *ARA Living Centers – Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1559.

⁵ *Ibid.*

physically abuses, neglects, or abandons an elder or dependent adult.⁶ The private right of action has a few elements that are uncommon in other civil actions, including allowing a decedent's personal representative or successor to recover damages for the pain and suffering suffered by an elder or dependent adult before they passed away,⁷ limiting the pain and suffering damages that can be recovered to the damages awardable under MICRA, and requiring the court to award a prevailing plaintiff attorney's fees and costs.⁸

Additionally, the EADACPA civil action has two heightened evidentiary hurdles: the plaintiff must establish that the defendant acted with recklessness, oppression, fraud, or malice in the commission of the physical abuse, neglect, or abandonment of the elder dependent adult, and the plaintiff must prove their case by clear and convincing evidence.⁹ The clear and convincing burden of proof requires a plaintiff to prove that it is "highly probable" that the facts of the case are true.¹⁰ This is a higher burden of proof than the burden in most civil cases – the preponderance of the evidence standard – which requires the plaintiff show that the facts are "more likely to be true than not true."¹¹

3. The problem of, and existing sanctions for, spoliation of evidence

"One serious form of discovery abuse is the spoliation of evidence, which is defined as the destruction or alteration of relevant evidence or the failure to preserve evidence for another party's use in pending or future litigation."¹² Spoliation of evidence "can destroy fairness and justice, for it increases the risk of an erroneous decision on the merits of the underlying cause of action."¹³ Spoliation "can also increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both."¹⁴

The Civil Discovery Act¹⁵ authorizes a range of penalties for a party's refusal to obey a discovery order, including monetary sanctions, evidentiary sanctions, issue sanctions, and terminating sanctions.¹⁶ Spoliation of evidence is a misuse of evidence under the

⁶ See Welf. & Inst. Code, § 15657.

⁷ SB 29 (Laird, 2025) would eliminate the rule prohibiting a successor-in-interest from recovering damages for the pain and suffering that the decedent suffered before death. SB 29 is pending in the Assembly.

⁸ Welf. & Inst. Code, § 15657.

⁹ *Ibid.*

¹⁰ *In re Angelia P.* (1981) 28 Cal.3d 908, 919; *see also* CACI No. 201 (Obligation to Prove – Clear and Convincing Proof).

¹¹ CACI No. 200 (Obligation to Prove – More Likely True Than Not); *see Angelia, supra*, at p. 908.

¹² *Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121, 1139.

¹³ *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 8.

¹⁴ *Id.* at pp. 1559-1560.

¹⁵ Code Civ. Proc., div. 4, §§ 2016.010 et seq.

¹⁶ *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.566, 604.

Civil Discovery Act that may result in sanctions against the offending party.¹⁷ At the low end, discovery sanctions can be purely monetary.¹⁸ Middle-range sanctions include preventing the offending party from introducing certain pieces of evidence, or declaring facts in the case that were affected by the misconduct established.¹⁹ For the most extreme discovery violations, the judge may impose terminating sanctions on the offending party, by either dismissing the case or declaring a default judgment for the defendant.²⁰

“The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination.”²¹

“Although in extreme cases a court has the authority to order a terminating sanction as a first measure, a terminating sanction should generally not be imposed until the court has attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective.”²²

In addition to discovery sanctions, the Evidence Code establishes potential consequences for spoliation of evidence. Specifically, Evidence Code section 413 permits the trier of fact to consider a party’s “willful suppression of evidence” in determining what inferences to draw from the facts of the case at trial.²³

4. AB 2773 and the Governor’s veto

In 2024, the Legislature passed AB 2773 (Kalra, 2024), which would have automatically lowered the burden of proof in a civil action under the EADACPA, from clear and convincing evidence to preponderance of the evidence, when the defendant was found to have committed spoliation of evidence. AB 2773 would have applied in EADACPA civil actions against a residential care facility or skilled nursing facility, as defined.

Governor Gavin Newsom vetoed the bill, stating in his veto message:

This bill would require the applicable standard of proof in cases brought under the Elder Abuse and Dependent Adult Civil Protection Act to be reduced if the defendant is found to have spoliated evidence.

While I share the author's goals of deterring defendants from concealing, damaging, or destroying evidence and preventing elder and dependent abuse, we should not completely remove a judge's discretion to craft appropriate remedies in response to spoliation. A more nuanced approach would be to

¹⁷ See Cod Civ. Proc., §§ 2030.010, 2030.030; *Cedars-Sinai Medical Center*, *supra*, at p. 12.

¹⁸ Code Civ. Proc., § 2023.030(a).

¹⁹ *Id.*, § 2023.030(b), (c).

²⁰ *Id.*, § 2023.030(d).

²¹ *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 993.

²² *Lopez*, *supra*, at p. 604 (cleaned up).

²³ Evid. Code, § 413; see also CACI No. 204 (Willful Suppression of Evidence).

specify that a judge may reduce the standard of proof under these circumstances.²⁴

5. This bill gives the court the discretion to lower the standard of evidence in an EADACPA civil action when the defendant has been found to have committed spoliation of evidence

This bill is substantially similar to AB 2773 except that, consistent with the Governor's veto message, the bill gives the judge the discretion, rather than requires the judge, to lower the burden of proof upon a finding that a residential care facility or a skilled nursing facility committed spoliation of evidence in an EADACPA civil action. The bill requires the court to consider factors in determining whether spoliation has occurred and to make its findings in writing.

Like AB 2773, the remedy established by this bill is fairly narrow. The bill's definition of "spoliation of evidence" requires the defendant to have intentionally destroyed or concealed evidence with the intent of preventing the evidence from being produced to the plaintiff—a mere accidental deletion of records could not result in a lowered burden of proof. Moreover, the evidence in question must be material to the plaintiff's EADACPA claim and be evidence that is specifically required to be maintained or preserved by the other party. Finally, the plaintiff must have actually been materially prejudiced by the spoliation of evidence. These guardrails appear sufficient to ensure that only facilities that engaged in significant and intentional destruction of evidence will be subject to the possibility of a lowered burden of proof.

Even when a facility has been found to have deliberately spoliated evidence, it can still prevail on the EADACPA claim. First, as noted above, the bill grants the judge the discretion to lower the burden of proof; the facility would thus be able to argue that its acts do not warrant the remedy and the judge, considering all of the facts, would have the discretion to maintain the clear and convincing evidentiary standard. Second, even if the judge decides to lower the burden of proof under this bill, the plaintiff still has the burden of proving their case—they just have to do it under the preponderance of the evidence standard rather than the clear and convincing evidence standard. The bill also makes clear that the court retains all existing remedies for misuse of the discovery process, which can be both less severe (e.g., monetary sanctions) and more severe (e.g., terminating sanctions) based on the nature of the party's misconduct, so when spoliation has been established, both parties could argue that alternative sanctions are warranted.

Opponents of the bill argue that existing sanctions under the Civil Discovery Act are sufficient to punish bad actor-facilities that engage in spoliation of evidence. The Civil Discovery Act does not, however, specifically permit a court to lower the burden of

²⁴ Governor's veto message to Assem. on Assem. Bill No. 2773 (Sept. 29, 2024) Recess. J. No. 28 (2023-2024 Reg. Sess.) p. 7291.

proof in a civil action as a sanction for spoliation of evidence,²⁵ likely because most civil actions are already subject to the preponderance of the evidence standard. And while opponents are correct that the EADACPA civil action was deliberately crafted with a higher standard of proof to discourage frivolous lawsuits, it is far from clear that this bill will open the floodgates. As discussed above, this bill's remedy applies only where (1) the defendant intentionally destroyed or concealed (3) material evidence (2) that it was required to maintain and produce, (4) with the intent of preventing the evidence from being produced, and (5) that spoliation did, in fact, materially prejudice the other party. When all of these conditions are met, the result is that the facility has deliberately prevented the plaintiff from obtaining evidence they need for their case; permitting the court to lower the burden to preponderance of the evidence appears to be a reasonable response to such a flagrant misuse of the discovery process. Indeed, if courts find it necessary to utilize this bill on a regular basis, it may suggest that an even more stringent remedy is needed to prevent facilities from destroying evidence.

6. Arguments in support

According to CANHR, one of the bill's sponsors:

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

²⁵ See Code Civ. Proc., § 2023.030.

proof in these special cases will help ensure defendants don't tip the scales of justice by falsifying evidence.

7. 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.

SUPPORT

CANHR (co-sponsor)
Consumer Attorneys of California (co-sponsor)
AARP California
Association of Regional Center Agencies
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

OPPOSITION

Civil Justice Association of California

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation:

AB 2800 (Kalra, 2024) would have expanded the definitions of “neglect” and “physical abuse” under the EADACPA and lowered the burden of proof for an award of attorney fees, costs, and damages under the Act to when it is proved that the defendant has been guilty of recklessness, oppression, fraud, or malice by a preponderance of the evidence. AB 2800 died in the Assembly Aging and Long-Term Care Committee.

AB 2773 (Kalra, 2024) was similar to this bill, except the burden of proof was automatically lowered upon a finding of spoliation. AB 2773, and the Governor’s veto of it, are discussed further in Comment 4 of this analysis.

SB 314 (Dodd, Ch. 21, Stats. 2019) extended the remedies of attorney fees, costs, and damages to a plaintiff under the EADACPA when it is proven by clear and convincing evidence that the defendant was liable for abandonment and has also been guilty of recklessness, oppression, fraud, or malice.

AB 859 (Eggman, 2017) was virtually identical to AB 2773 (Kalra, 2024) except that the lowered burden of proof would not have applied in a case alleging abandonment (which was not added to the statute until the passage of SB 314). AB 859 was vetoed by Governor Edmund G. Brown, Jr., who stated in his veto message that “[c]urrently when judges find spoliation, they have numerous sanctions at their disposal which they can impose against an offending party. In appropriate circumstances, this will facilitate establishing a claim of abuse. Accordingly, I don't believe changing the standard of proof is warranted.”

PRIOR VOTES:

Assembly Floor (Ayes 57, Noes 8)
Assembly Judiciary Committee (Ayes 8, Noes 2)
