

AMENDED IN SENATE MAY 13, 2009

SENATE BILL

No. 219

Introduced by Senator Yee
(Coauthor: Assembly Member Portantino)

February 23, 2009

An act to amend Section 8547.10 of the Government Code, relating to improper governmental activities.

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as amended, Yee. Disclosure of improper governmental activities: University of California: damages.

Existing law, the California Whistleblower Protection Act, authorizes a University of California employee or applicant for employment to ~~recover~~ *have an available action for* damages caused by intentional acts of reprisal, retaliation, threats, or coercion only if the university failed to reach a decision regarding a complaint filed with a specified university officer by the injured party within the time limits established for that purpose by the Regents of the University of California.

This bill would also authorize ~~recovery~~ *an available action* for damages if the university reached a decision regarding the complaint ~~within those time limits filed with the specified university officer.~~

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 8547.10 of the Government Code is
- 2 amended to read:

1 8547.10. (a) A University of California employee, including
2 an officer or faculty member, or applicant for employment may
3 file a written complaint with his or her supervisor or manager, or
4 with any other university officer designated for that purpose by
5 the regents, alleging actual or attempted acts of reprisal, retaliation,
6 threats, coercion, or similar improper acts for having made a
7 protected disclosure, together with a sworn statement that the
8 contents of the written complaint are true, or are believed by the
9 affiant to be true, under penalty of perjury. The complaint shall be
10 filed within 12 months of the most recent act of reprisal complained
11 about.

12 (b) Any person who intentionally engages in acts of reprisal,
13 retaliation, threats, coercion, or similar acts against a University
14 of California employee, including an officer or faculty member,
15 or applicant for employment for having made a protected
16 disclosure, is subject to a fine not to exceed ten thousand dollars
17 (\$10,000) and imprisonment in the county jail for up to a period
18 of one year. Any university employee, including an officer or
19 faculty member, who intentionally engages in that conduct shall
20 also be subject to discipline by the university.

21 (c) In addition to all other penalties provided by law, any person
22 who intentionally engages in acts of reprisal, retaliation, threats,
23 coercion, or similar acts against a university employee, including
24 an officer or faculty member, or applicant for employment for
25 having made a protected disclosure shall be liable in an action for
26 damages brought against him or her by the injured party. Punitive
27 damages may be awarded by the court where the acts of the
28 offending party are proven to be malicious. Where liability has
29 been established, the injured party shall also be entitled to
30 reasonable attorney's fees as provided by law. ~~However, any action~~
31 ~~for damages shall not be available to the injured party unless the~~
32 *An action for damages shall only be available to the injured party*
33 *if the injured party has first filed a complaint with the university*
34 *officer identified pursuant to subdivision (a), and the university*
35 *has reached, or failed to reach, a decision regarding that complaint*
36 *within the time limits established for that purpose by the regents.*
37 *either reached a decision regarding the complaint, or failed, within*
38 *the time limits established by the regents, to reach a decision*
39 *regarding the complaint.*

1 (d) This section is not intended to prevent a manager or
2 supervisor from taking, directing others to take, recommending,
3 or approving any personnel action or from taking or failing to take
4 a personnel action with respect to any university employee,
5 including an officer or faculty member, or applicant for
6 employment if the manager or supervisor reasonably believes any
7 action or inaction is justified on the basis of evidence separate and
8 apart from the fact that the person has made a protected disclosure.

9 (e) In any civil action or administrative proceeding, once it has
10 been demonstrated by a preponderance of the evidence that an
11 activity protected by this article was a contributing factor in the
12 alleged retaliation against a former, current, or prospective
13 employee, the burden of proof shall be on the supervisor, manager,
14 or appointing power to demonstrate by clear and convincing
15 evidence that the alleged action would have occurred for legitimate,
16 independent reasons even if the employee had not engaged in
17 protected disclosures or refused an illegal order. If the supervisor,
18 manager, or appointing power fails to meet this burden of proof
19 in an adverse action against the employee in any administrative
20 review, challenge, or adjudication in which retaliation has been
21 demonstrated to be a contributing factor, the employee shall have
22 a complete affirmative defense in the adverse action.

23 (f) Nothing in this article shall be deemed to diminish the rights,
24 privileges, or remedies of any employee under any other federal
25 or state law or under any employment contract or collective
26 bargaining agreement.