

Senate Bill No. 219

Passed the Senate August 24, 2009

Secretary of the Senate

Passed the Assembly July 13, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 219, 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 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 an available action for damages if the university reached a decision regarding the complaint filed with the specified university officer and state that these provisions are not intended to prohibit an injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.

The people of the State of California do enact as follows:

SECTION 1. Section 8547.10 of the Government Code is amended to read:

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

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

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. An action for damages shall be available to the injured party only if the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has either reached a decision regarding the complaint, or failed, within the time limits established by the regents, to reach a decision regarding the complaint. Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.

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

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager,

or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

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

Approved _____, 2009

Governor