

Senate Bill No. 650

CHAPTER 104

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

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 650, Yee. Disclosure of improper governmental activities: universities: damages.

Existing law, the California Whistleblower Protection Act, authorizes a California State University employee or applicant for employment to have an available action for damages caused by intentional acts of reprisal, retaliation, threats, or coercion under a specified procedure.

This bill would authorize an available action for damages or other legal remedies arising on or after January 1, 2011, for a University of California employee or applicant for employment under the same procedure.

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. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents. 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.

SEC. 2. This act shall only affect an action for damages or other legal remedies arising on or after January 1, 2011.