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**GOVERNMENT CODE - GOV**

**TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]** ( Title 2 enacted by Stats. 1943, Ch. 134. )

**DIVISION 1. GENERAL [8000 - 8899.95]** ( Division 1 enacted by Stats. 1943, Ch. 134. )

**CHAPTER 6.5. California State Auditor [8543 - 8548.9]** ( Heading of Chapter 6.5 amended by Stats. 2012, Ch. 281, Sec. 4. )

**ARTICLE 3. California Whistleblower Protection Act [8547 - 8547.15]** ( Heading of Article 3 (as added by Stats. 1993, Ch. 12) amended by Stats. 2003, Ch. 107, Sec. 23. )

**8547.** This article shall be known and may be cited as the "California Whistleblower Protection Act."

(Amended by Stats. 1999, Ch. 673, Sec. 1. Effective January 1, 2000.)

**8547.1.** The Legislature finds and declares that state employees should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The Legislature further finds and declares that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.

(Repealed and added by Stats. 1999, Ch. 673, Sec. 3. Effective January 1, 2000.)

**8547.2.** For the purposes of this article, the following terms have the following meanings:

(a) (1) "Employee" means either of the following:

(A) An individual appointed by the Governor, or employed or holding office in a state agency as defined by Section 11000, including, for purposes of Sections 8547.3 to 8547.7, inclusive, an employee of the California State University, or an individual appointed by the Legislature to a state board or commission and who is not a Member or employee of the Legislature.

(B) A person employed by the Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts for the purposes of Sections 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those provisions of Section 8547.4 concerning notice of adverse action and the State Personnel Board.

(2) "Employee" includes a former employee who met the criteria of this subdivision during their employment.

(b) "Illegal order" means a directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) (1) "Improper governmental activity" means an activity by a state agency or by an employee that is undertaken in the performance of the employee's duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of their employment, and that meets any of the following criteria:

(A) The activity is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, misuse of state expenditures, including allocations, loans, or grants, or willful omission to perform duty.

(B) The activity is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual.

(C) The activity is economically wasteful, involves gross misconduct, incompetency, or inefficiency.

(2) For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and 8547.11, "improper governmental activity" includes any activity by the University of California or by an employee, including an officer or faculty member, who otherwise meets the criteria of this subdivision.

(3) For purposes of Sections 8547.4, 8547.5, and 8547.13, "improper governmental activity" includes any activity by the Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, or by an employee thereof, who otherwise meets the criteria of this subdivision.

(d) "Person" means an individual, corporation, trust, association, a state or local government, or an agency or instrumentality of any of the foregoing.

(e) (1) "Protected disclosure" means a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence either of the following circumstances:

(A) An improper governmental activity.

(B) A condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(2) "Protected disclosure" specifically includes a good faith communication to the California State Auditor's Office alleging an improper governmental activity and any evidence delivered to the California State Auditor's Office in support of the allegation.

(3) "Protected disclosure" also includes, but is not limited to, a complaint made to the Commission on Judicial Performance.

(f) (1) "State agency" is defined by Section 11000.

(2) "State agency" includes the University of California for purposes of Sections 8547.5 to 8547.7, inclusive, and the California State University for purposes of Sections 8547.3 to 8547.7, inclusive.

(3) Sections 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the courts of appeal, the superior courts, and the Administrative Office of the Courts in the same manner as they apply to a state agency.

*(Amended by Stats. 2024, Ch. 568, Sec. 2. (AB 2455) Effective January 1, 2025.)*

**8547.3.** (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the rights conferred pursuant to this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

*(Amended by Stats. 1999, Ch. 673, Sec. 5. Effective January 1, 2000.)*

**8547.4.** The State Auditor shall administer this article and shall investigate and report on improper governmental activities. If, after investigating, the State Auditor finds that an employee may have engaged or participated in improper governmental activities, the State Auditor shall prepare an investigative report and send a copy of the investigative report to the employee's appointing power. Subject to the limitations of Section 8547.5, the State Auditor may provide to the employee's appointing power any evidence gathered during the investigation that, in the judgment of the State Auditor, is necessary to support an adverse action or an action recommended pursuant to subdivision (a) of Section 8547.7. Within 60 days after receiving a copy of the State Auditor's investigative report, the appointing power shall either serve a notice of adverse action upon the employee who is the subject of the investigative report or set forth in writing its reasons for not taking adverse action. The appointing power shall file a copy of the notice of adverse action with the State Personnel Board in accordance with Section 19574, and shall submit a copy to the State Auditor. If the appointing power does not take adverse action within 60 days of receiving a copy of the State Auditor's investigative report, it shall submit its written reasons for not doing so to the State Auditor and the State Personnel Board, and adverse action may be taken as provided in Section 19583.5. Any employee who is served with a notice of adverse action may appeal to the State Personnel Board in accordance with Section 19575.

*(Amended by Stats. 2009, Ch. 452, Sec. 6. (AB 567) Effective January 1, 2010.)*

**8547.5.** (a) The California State Auditor shall create the means for the submission of allegations of improper governmental activity both by transmission via mail or other carrier to a specified mailing address and electronic submission through an internet website portal. The California State Auditor may request that a person submitting an allegation provide their name and contact information and provide the names and contact information for any persons who could help to substantiate the claim. However, the California State Auditor shall not require any person submitting an allegation to provide their name or contact information and shall clearly state on the agency internet website that this information is not required in order to submit an allegation.

(b) Upon receiving specific information that any employee or state agency has engaged in an improper governmental activity, the California State Auditor may conduct an investigation of the matter. The identity of the person providing the information that initiated the investigation, or of any person providing information in confidence to further an investigation, shall not be disclosed without the express permission of the person providing the information except that the California State Auditor may make the disclosure to a law enforcement agency that is conducting a criminal investigation.

(c) (1) The California State Auditor shall create an alternative system for submission to an independent investigator of allegations of improper governmental activity engaged or participated in by employees of the California State Auditor's Office. The system shall allow for submission of allegations both by delivery to a specified mailing address and electronic submission through an internet website portal. The system may request that people submitting allegations provide their name and contact information and the names and contact information for any persons who could help to substantiate the claim. However, the system shall not require people submitting an allegation to provide their name or contact information and shall clearly state that this information is not required to submit an allegation. The system shall ensure that all submissions are promptly and directly delivered to the Employment and Administrative Mandate Section of the Department of Justice without prior review by the California State Auditor. The Employment and Administrative Mandate Section of the Department of Justice shall review submissions. If the Employment and Administrative Mandate Section of the Department of Justice determines that a submission constitutes an allegation of improper governmental activity, it shall transmit the submission to the independent investigator for further action in accordance with this section.

(2) (A) The independent investigator shall conduct investigations in a manner consistent with the provisions of this article relating to other state civil service employees. If the independent investigator finds that the facts support a conclusion that an employee engaged or participated in improper governmental activities, the investigator shall prepare a confidential investigative report and, subject to the limitations of this section, send a copy of the report and all evidence gathered during the investigation to the California State Auditor, the Chief Deputy California State Auditor, and the California State Auditor's Office chief counsel and human resource manager.

(B) If the independent investigator determines it to be appropriate, the independent investigator shall report this information to the Attorney General, to the policy committees of the Senate and Assembly having jurisdiction over the subject the Assembly and Senate budget committees, the Joint Legislative Audit Committee, and to any other authority that the independent investigator determines appropriate. Subject to the limitations of this section, the independent investigator may provide to the California State Auditor any evidence gathered during the investigation that, in the judgment of the independent investigator, is necessary to support any of the report's recommendations. Within 60 days of receiving the independent investigator's report, the California State Auditor shall report to the independent investigator any actions that it has taken or that it intends to take to implement the recommendations. The California State Auditor shall file subsequent reports on a monthly basis until final action has been taken.

(3) (A) Within 60 days after receiving a copy of the independent investigator's report, the California State Auditor's Office shall either serve a notice of adverse action upon the employee who is the subject of the investigative report, or submit to the independent investigator in writing its reasons for not taking adverse action.

(B) If the California State Auditor's Office elects not to serve a notice of adverse action upon the employee who is the subject of the investigative report, then, within 10 days of receiving the reasons provided by the California State Auditor's Office pursuant to subparagraph (A), the independent investigator shall:

(i) Notify the Joint Legislative Audit Committee, as described in Section 10501, that it has provided a report to the California State Auditor's Office pursuant to this paragraph.

(ii) Upon request, provide a copy of the report described in this paragraph, redacted to remove all information that could identify any reporting party, witness, or employee, to the Joint Legislative Audit Committee, as described in Section 10501.

(C) If the California State Auditor's Office does not take adverse action, the independent investigator may seek consent from the State Personnel Board to file charges in accordance with Section 19583.5.

(D) The following shall not be confidential:

(i) A notice of adverse action served by the California State Auditor.

(ii) A request to file charges filed by the independent investigator with the State Personnel Board.

(4) The California State Auditor's Office shall reimburse the Employment and Administrative Mandate Section of the Department of Justice for the costs of retaining the independent investigator.

(5) For purposes of this subdivision and any investigation conducted pursuant thereto, "improper governmental activity" has the same meaning as set forth in subdivision (c) of Section 8547.2, except that it shall not include violations of an executive order of the Governor, any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or any other rule, regulation, or requirement that the California State Auditor's Office, because of its independence from executive branch and legislative control, is not required to follow.

(d) For purposes of this section, "independent investigator" means an investigator who is retained by the Employment and Administrative Mandate Section of the Department of Justice who is all of the following:

(1) An attorney who is licensed to practice law in this state or a certified fraud examiner.

(2) A person who is experienced in investigating allegations of improper governmental activity in a confidential manner.

(3) A person who is outside of, and independent from, the California State Auditor's Office and also independent of the executive branch and legislative control.

*(Amended by Stats. 2024, Ch. 568, Sec. 3. (AB 2455) Effective January 1, 2025.)*

**8547.6.** (a) The State Auditor may request the assistance of any state department, agency, or employee in evaluating an allegation or conducting any investigation of an improper governmental activity as authorized by this article. In response to a request for assistance from the State Auditor, that state department, agency, or employee shall provide the assistance, including, but not limited to, providing access to documents or other information in a timely manner, as required by Section 8545.2. If an investigation conducted by the State Auditor involves access to confidential academic peer review records of University of California academic personnel, these records shall be provided in a form consistent with university policy effective on August 1, 1992. No information obtained from the State Auditor by any department, agency, or employee as a result of the State Auditor's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

(b) As an alternative to conducting its own investigation, if the State Auditor determines that there is reasonable cause to believe that a state agency or employee may have engaged in an improper governmental activity, the State Auditor, subject to the limitations of Section 8547.5, may refer the allegation to the involved state agency, or to another state agency having direct oversight of the involved state agency, to conduct an investigation of the allegation under the State Auditor's supervision. If the State Auditor refers an allegation to the involved state agency or to another state agency having direct oversight of the involved state agency, that state agency shall investigate the allegation and report the results of the investigation to the State Auditor within 60 days of the referral and monthly thereafter until final action has been taken. In addition, whenever the State Auditor determines that there is reasonable cause to believe that a state agency or employee may have engaged in an improper governmental activity, the State Auditor, subject to the limitations of Section 8547.5, may refer the allegation to a criminal or administrative law enforcement agency in lieu of conducting or supervising an investigation of the matter.

*(Amended by Stats. 2011, Ch. 328, Sec. 7. (AB 1102) Effective January 1, 2012.)*

**8547.7.** (a) If, after investigating an allegation, the California State Auditor finds that a state agency or employee may have engaged or participated in an improper governmental activity, the California State Auditor shall prepare an investigative report and send a copy of the report to the head of the agency involved and to the head of any other agency that has direct oversight over that involved agency. The investigative report may include the California State Auditor's recommended actions to prevent the continuation or recurrence of the activity. If appropriate, the California State Auditor shall report this information to the Attorney General, the policy committees of the Senate and Assembly having jurisdiction over the subject involved, the Assembly and Senate budget committees, the Joint Legislative Audit Committee, and to any other authority that the California State Auditor determines appropriate. Subject to the limitations of Section 8547.5, the California State Auditor may provide to the involved agency any evidence gathered during the investigation that, in the judgment of the California State Auditor, is necessary to support any of the recommendations. Within 60 days of receiving the California State Auditor's investigative report, the involved agency shall report to the California State Auditor any actions that it has taken or that it intends to take to implement the recommendations. The agency shall file subsequent reports on a monthly basis until final action has been taken.

(b) The California State Auditor shall not have any enforcement power. In any case in which the California State Auditor finds that a state agency or employee may have engaged in an improper governmental activity, the California State Auditor may provide the

finding, and any evidence supporting the finding, subject to the limitations of Section 8547.5, to a criminal law enforcement agency, an administrative law enforcement agency, or a licensing agency that has authority to investigate the matter.

(c) The California State Auditor shall keep confidential every investigation, including, but not limited to, all investigative files and work product, except that the California State Auditor, whenever the California State Auditor determines it necessary to serve the interests of the state, and subject to the limitations of Section 8547.5, may issue a public report of an investigation that has substantiated an improper governmental activity, keeping confidential the identity of the employee or employees involved. In addition, subject to the limitations of Section 8547.5, the California State Auditor may release any findings or evidence supporting any findings resulting from an investigation conducted pursuant to this article whenever the California State Auditor determines it necessary to serve the interests of the state.

(d) This section does not limit any authority conferred upon the Attorney General or any other department or agency of government to investigate any matter.

*(Amended by Stats. 2024, Ch. 568, Sec. 4. (AB 2455) Effective January 1, 2025.)*

**8547.8.** (a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, 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 filed with the board, 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 state employee or applicant for state 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 a period not to exceed one year. Pursuant to Section 19683, any state civil service employee who intentionally engages in that conduct shall be disciplined by adverse action as provided by Section 19572.

(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 state employee or applicant for state 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 State Personnel Board pursuant to subdivision (a), and the board has issued, or failed to issue, findings pursuant to Section 19683.

(d) This section is not intended to prevent an appointing power, 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 state employee or applicant for state employment if the appointing power, 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 as defined in subdivision (b) of Section 8547.2.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of 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.

*(Amended by Stats. 2001, Ch. 883, Sec. 3. Effective January 1, 2002.)*

**8547.9.** Notwithstanding Section 19572, if the State Personnel Board determines that there is a reasonable basis for an alleged violation, or finds an actual violation of Section 8547.3 or 19683, it shall transmit a copy of the investigative report to the State Auditor. All working papers pertaining to the investigative report shall be made available under subpoena in a civil action brought under Section 19683.

*(Added by Stats. 1993, Ch. 12, Sec. 8. Effective May 7, 1993.)*

**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.

*(Amended by Stats. 2010, Ch. 104, Sec. 1. (SB 650) Effective January 1, 2011.)*

**8547.11.** (a) A University of California employee, including an officer or faculty member, may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a University of California official, designated for that purpose by the regents, or the State Auditor matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

*(Added by Stats. 1993, Ch. 12, Sec. 8. Effective May 7, 1993.)*

**8547.12.** (a) A California State University 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 trustees, 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 California State University 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 trustees. 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.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action.

*(Amended by Stats. 1999, Ch. 673, Sec. 8. Effective January 1, 2000.)*

**8547.13.** (a) As used in this section:

(1) "Agency" means the Supreme Court, the courts of appeal, the superior courts, or the Administrative Office of the Courts.

(2) "Employee" means a person employed by the Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts.

(b) An employee or applicant for employment who files a written complaint with his or her supervisor, manager, or any other agency officer designated for that purpose by the agency, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, 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 complained about.

(c) The State Personnel Board shall investigate any complaint filed, in accordance with the procedures of this chapter, and make a recommendation to the hiring entity of the agency of the employee or applicant regarding whether retaliation resulted in an adverse action regarding the employee and, if so, what steps should be taken to remedy the situation.

(d) Except to the extent that justices and judges subject to the jurisdiction of the Commission on Judicial Performance are immune from liability under the doctrine of judicial immunity, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee 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 a county jail for up to one year. An employee who intentionally engages in that conduct also shall be subject to discipline by the agency. This subdivision does not limit any other sanction that may be applicable by law.

(e) In addition to all other penalties provided by law, except to the extent that justices and judges subject to the jurisdiction of the Commission on Judicial Performance are immune from liability under the doctrine of judicial immunity, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee 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 if the acts of the offending party are proven to be malicious. If liability is established, the injured party also shall be entitled to reasonable attorney's fees as provided by law. It is not a prerequisite for an action for damages for the injured party to first file a complaint pursuant to subdivision (b).

(f) 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 an employee 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.

(g) In a 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 against the employee in an administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense on the issue of retaliation.

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

(i) An employee shall not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command a person for the purpose of interfering with the right of that person to disclose to an agency official, designated for that purpose by the agency, or the State Auditor matters within the scope of this article. For the purpose of this subdivision, "use of official authority or influence" includes all of the following:

(1) Promising to confer, or conferring, any benefit.

(2) Effecting, or threatening to effect, any reprisal.

(3) Taking or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(j) Except to the extent that justices and judges subject to the jurisdiction of the Commission on Judicial Performance are immune from liability under the doctrine of judicial immunity, an employee who violates subdivision (i) is subject to an action for civil damages brought against the employee by the injured party.

(k) Nothing in this section shall be construed to authorize an individual to disclose any information, the disclosure of which is otherwise prohibited by law.

*(Added by Stats. 2010, Ch. 160, Sec. 2. (AB 1749) Effective January 1, 2011.)*

**8547.15.** An action for damages pursuant to this article shall not be subject to the claims presentation requirements of the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1).

*(Added by Stats. 2013, Ch. 781, Sec. 2. (SB 496) Effective January 1, 2014.)*