

1 **WHISTLEBLOWER AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stuart C. Reid**

5 House Sponsor: Rich Cunningham

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies grievance procedure provisions and the Utah Protection of Public  
10 Employees Act to address protections for employees who report certain wasteful or  
11 wrongful actions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ empowers the Career Service Review Office to review a grievance by a public entity  
16 employee who alleges that adverse action was taken against the public entity  
17 employee in retaliation for reporting wasteful or wrongful actions;
- 18 ▶ outlines the grievance procedure for a public entity employee;
- 19 ▶ protects an employee from adverse action for reporting wasteful or wrongful  
20 conduct;
- 21 ▶ requires a public entity employee who brings a claim of retaliatory action to choose  
22 the forum in which to assert the claim;
- 23 ▶ provides for a political subdivision or a state institution of higher education to  
24 create an administrative procedure for an employee to file a complaint;
- 25 ▶ shifts the burden of proof to the employer to prove that a communication was not  
26 made in good faith;
- 27 ▶ permits the award of costs and attorney fees to an employee who prevails in court;
- 28 ▶ increases fines imposed under the chapter and addresses who pays the fines;
- 29 ▶ requires an employer to provide a copy of the chapter to an employee under certain

30 circumstances;

31       ▶ addresses false accusations; and

32       ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       This bill coordinates with H.B. 193, Utah State Employment Amendments, by  
37 providing substantive amendments.

38 **Utah Code Sections Affected:**

39 AMENDS:

40       **67-19a-101**, as last amended by Laws of Utah 2010, Chapter 249

41       **67-19a-202**, as repealed and reenacted by Laws of Utah 2010, Chapter 249

42       **67-19a-301**, as last amended by Laws of Utah 2010, Chapter 249

43       **67-19a-302**, as last amended by Laws of Utah 2010, Chapter 249

44       **67-19a-303**, as last amended by Laws of Utah 2010, Chapter 249

45       **67-21-2**, as last amended by Laws of Utah 2007, Chapter 329

46       **67-21-3**, as last amended by Laws of Utah 2010, Chapter 324

47       **67-21-4**, as last amended by Laws of Utah 1999, Chapter 177

48       **67-21-5**, as last amended by Laws of Utah 1999, Chapter 177

49       **67-21-6**, as enacted by Laws of Utah 1985, Chapter 216

50       **67-21-9**, as enacted by Laws of Utah 1985, Chapter 216

51 ENACTS:

52       **67-19a-402.5**, Utah Code Annotated 1953

53       **67-21-3.5**, Utah Code Annotated 1953

54       **67-21-3.6**, Utah Code Annotated 1953

55       **67-21-3.7**, Utah Code Annotated 1953

56       **67-21-10**, Utah Code Annotated 1953

57 **Utah Code Sections Affected by Coordination Clause:**

58           **67-21-3.5**, Utah Code Annotated 1953

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60 *Be it enacted by the Legislature of the state of Utah:*

61           Section 1. Section **67-19a-101** is amended to read:

62           **67-19a-101. Definitions.**

63           As used in this chapter:

64           (1) "Administrator" means the person appointed under Section 67-19a-201 to head the  
65 Career Service Review Office.

66           (2) "Career service employee" means a person employed in career service as defined in  
67 Section 67-19-3.

68           (3) "Employer" means the state of Utah and all supervisory personnel vested with the  
69 authority to implement and administer the policies of an agency.

70           (4) "Grievance" means:

71           (a) a complaint by a career service employee concerning any matter touching upon the  
72 relationship between the employee and the employer; ~~[and]~~

73           (b) any dispute between a career service employee and the employer~~[-]; and~~

74           (c) a complaint by a reporting employee that a public entity has engaged in retaliatory  
75 action against the reporting employee.

76           (5) "Office" means the Career Service Review Office created under Section  
77 67-19a-201.

78           (6) "Public entity" is as defined in Section 67-21-2.

79           (7) "Reporting employee" means an employee of a public entity who alleges that the  
80 public entity engaged in retaliatory action against the employee.

81           (8) "Retaliatory action" means to do any of the following to an employee in violation of  
82 Section 67-21-3:

83           (a) dismiss the employee;

84           (b) reduce the employee's compensation;

85           (c) fail to increase the employee's compensation by an amount that the employee is

86 otherwise entitled to or was promised;

87 (d) fail to promote the employee if the employee would have otherwise been promoted;

88 (e) cause the employee to resign by subjecting the employee to conditions that a

89 reasonable person would consider intolerable; or

90 (f) threaten to take an action described in Subsections (8)(a) through (e).

91 [~~6~~] (9) "Supervisor" means the person:

92 (a) to whom an employee reports; or

93 (b) who assigns and oversees an employee's work.

94 Section 2. Section **67-19a-202** is amended to read:

95 **67-19a-202. Powers -- Scope of authority.**

96 (1) (a) The office shall serve as the final administrative body to review a grievance  
97 from a career service employee and an agency of a decision regarding:

98 (i) a dismissal;

99 (ii) a demotion;

100 (iii) a suspension;

101 (iv) a reduction in force;

102 (v) a dispute concerning abandonment of position;

103 (vi) a wage grievance if an employee is not placed within the salary range of the  
104 employee's current position;

105 (vii) a violation of a rule adopted under Chapter 19, Utah State Personnel Management  
106 Act; or

107 (viii) except as provided by Subsection (1)(b)(iii), equitable administration of the  
108 following benefits:

109 (A) long-term disability insurance;

110 (B) medical insurance;

111 (C) dental insurance;

112 (D) post-retirement health insurance;

113 (E) post-retirement life insurance;

- 114 (F) life insurance;
- 115 (G) defined contribution retirement;
- 116 (H) defined benefit retirement; and
- 117 (I) a leave benefit.

118 (b) The office shall serve as the final administrative body to review a grievance by a  
 119 reporting employee alleging retaliatory action.

120 [~~(b)~~] (c) The office may not review or take action on:

- 121 (i) a personnel matter not listed in Subsection (1)(a) or (b);
- 122 (ii) a grievance listed in Subsection (1)(a) or (b) that alleges discrimination or
- 123 retaliation related to a claim of discrimination that is a violation of a state or federal law for
- 124 which review and action by the office is preempted by state or federal law; or
- 125 (iii) a grievance related to a claim for which an administrative review process is
- 126 provided by statute and administered by:

127 (A) the Utah State Retirement Systems under Title 49, Utah State Retirement and  
 128 Insurance Benefit Act;

129 (B) the Public Employees' Benefit and Insurance Program under Title 49, Chapter 20,  
 130 Public Employees' Benefit and Insurance Program Act; or

131 (C) the Public Employees' Long-Term Disability Program under Title 49, Chapter 21,  
 132 Public Employees' Long-Term Disability Act.

133 (2) The time limits established in this chapter supersede the procedural time limits  
 134 established in Title 63G, Chapter 4, Administrative Procedures Act.

135 Section 3. Section **67-19a-301** is amended to read:

136 **67-19a-301. Charges submissible under grievance procedure.**

137 (1) This grievance procedure may only be used by career service employees who are  
 138 not:

- 139 (a) public applicants for a position with the state's work force;
- 140 (b) public employees of the state's political subdivisions;
- 141 (c) public employees covered by other grievance procedures; or

142 (d) employees of state institutions of higher education.

143 (2) (a) Whenever a question or dispute exists as to whether an employee is qualified to  
144 use this grievance procedure, the administrator shall resolve the question or dispute.

145 (b) The administrator's decision under Subsection (2)(a) is reviewable only by the  
146 Court of Appeals.

147 (3) Any career service employee may submit a grievance based upon a claim or charge  
148 of injustice or oppression, including dismissal from employment, resulting from an act,  
149 occurrence, omission, or condition for solution through the grievance procedures set forth in  
150 this chapter.

151 (4) A reporting employee who desires to bring an administrative claim of retaliatory  
152 action shall use the grievance procedure described in Section 67-19a-402.5.

153 Section 4. Section **67-19a-302** is amended to read:

154 **67-19a-302. Levels of procedure.**

155 (1) A career service employee may grieve the issues specified under Subsection  
156 67-19a-202(1)(a) to all levels of the grievance procedure described in Section 67-19a-402.

157 (2) (a) A career service employee may grieve all other matters only to the level of the  
158 department head.

159 (b) The decision of the department head on a matter under Subsection (2)(a) is final  
160 and may not be advanced to the office.

161 (3) In accordance with Section 67-19a-402.5, and subject to Section 67-21-4, a  
162 reporting employee may file directly with the office a grievance alleging retaliatory action.

163 Section 5. Section **67-19a-303** is amended to read:

164 **67-19a-303. Employees' rights in grievance procedure.**

165 (1) For the purpose of submitting and advancing a grievance, a career service  
166 employee, or a reporting employee alleging retaliatory action, may:

167 (a) obtain assistance by a representative of the employee's choice to act as an advocate  
168 at any level of the grievance procedure;

169 (b) request a reasonable amount of time during work hours to confer with the

170 representative and prepare the grievance; and

171 (c) call other employees as witnesses at a grievance hearing.

172 (2) The state shall allow employees to attend and testify at the grievance hearing as  
173 witnesses if the employee has given reasonable advance notice to the employee's immediate  
174 supervisor.

175 (3) No person may take any reprisals against ~~[any]~~ a career service employee or a  
176 reporting employee for use of a grievance ~~[procedures specified]~~ procedure described in this  
177 chapter.

178 (4) (a) The employing agency of an employee who files a grievance may not place  
179 grievance forms, grievance materials, correspondence about the grievance, agency and  
180 department replies to the grievance, or other documents relating to the grievance in the  
181 employee's personnel file.

182 (b) The employing agency of an employee who files a grievance may place records of  
183 disciplinary action in the employee's personnel file.

184 (c) If any disciplinary action against an employee is rescinded through the grievance  
185 procedures ~~[established]~~ described in this chapter, the agency and the Department of Human  
186 Resource Management shall remove the record of the disciplinary action from the employee's  
187 agency personnel file and central personnel file.

188 (d) An agency may maintain a separate grievance file relating to an employee's  
189 grievance, but shall discard the file after three years.

190 Section 6. Section **67-19a-402.5** is enacted to read:

191 **67-19a-402.5. Procedural steps to be followed by reporting employee alleging**  
192 **retaliatory action.**

193 (1) A reporting employee who desires to assert an administrative grievance of  
194 retaliatory action:

195 (a) shall submit the grievance in writing within 20 days after the day on which the  
196 retaliatory action occurs;

197 (b) is not required to comply with Section 63G-7-402 to file the grievance; and

198           (c) is subject to the provisions of Section 67-24-4.  
199           (2) (a) When a reporting employee files a grievance with the administrator under  
200 Subsection (1), the administrator shall initially determine:  
201           (i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah  
202 Protection of Public Employees Act, to bring the grievance and use the grievance procedure;  
203           (ii) whether the office has authority to review the grievance;  
204           (iii) whether, if the alleged grievance were found to be true, the reporting employee  
205 would be entitled to relief under Subsection 67-21-3.5(2); and  
206           (iv) whether the reporting employee has been directly harmed.  
207           (b) To make the determinations described in Subsection (2)(a), the administrator may:  
208           (i) hold an initial hearing, where the parties may present oral arguments, written  
209 arguments, or both; or  
210           (ii) conduct an administrative review of the grievance.  
211           (3) (a) If the administrator holds an initial hearing, the administrator shall issue a  
212 written decision within 15 days after the day on which the hearing is adjourned.  
213           (b) If the administrator chooses to conduct an administrative review of the grievance,  
214 the administrator shall issue the written decision within 15 days after the day on which the  
215 administrator receives the grievance.  
216           (4) (a) If the administrator determines the office has authority to review the grievance,  
217 the administrator shall provide for an evidentiary hearing in accordance with Section  
218 67-19a-404.  
219           (b) The administrator may dismiss the grievance, without holding a hearing or taking  
220 evidence, if the administrator:  
221           (i) finds that, even if the alleged grievance were found to be true, the reporting  
222 employee would not be entitled to relief under Subsection 67-21-3.5(2); and  
223           (ii) provides the administrator's findings, in writing, to the reporting employee.  
224           (c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act,  
225 in taking action under this section.



226 (5) A decision reached by the office in reviewing a retaliatory action grievance from a  
227 reporting employee may be appealed directly to the Utah Court of Appeals.

228 (6) (a) Except as provided in Subsection (6)(b), an appellate court may award costs and  
229 attorney fees, accrued at the appellate court level, to a prevailing employee.

230 (b) A court may not order the office to pay costs or attorney fees under this section.

231 Section 7. Section **67-21-2** is amended to read:

232 **67-21-2. Definitions.**

233 As used in this chapter:

234 (1) "Abuse of authority" means an arbitrary or capricious exercise of power that:

235 (a) adversely affects the employment rights of another; or

236 (b) results in personal gain to the person exercising the authority or to another person.

237 ~~[(1)]~~ (2) "Adverse action" means to discharge, threaten, or [otherwise] discriminate  
238 against an employee in [any] a manner that affects the employee's employment, including  
239 compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

240 ~~[(2)]~~ (3) "Communicate" means a verbal, written, broadcast, or other communicated  
241 report.

242 (4) "Damages" means general and special damages for injury or loss caused by each  
243 violation of this chapter.

244 ~~[(3)]~~ (5) "Employee" means a person who performs a service for wages or other  
245 remuneration under a contract of hire, written or oral, express or implied.

246 ~~[(4)]~~ (6) (a) "Employer" means the [employing state agency or political subdivision of  
247 the state] public body or public entity that employs the employee.

248 (b) "Employer" includes an agent of an employer.

249 (7) "Gross mismanagement" means action or failure to act by a person, with respect to  
250 a person's responsibility, that causes significant harm or risk of harm to the mission of the  
251 public entity or public body that employs, or is managed or controlled by, the person.

252 (8) "Judicial employee" means an employee of the judicial branch of state government.

253 (9) "Legislative employee" means an employee of the legislative branch of state

254 government.

255 (10) "Political subdivision employee" means an employee of a political subdivision of  
256 the state.

257 [~~5~~] (11) "Public body" means any of the following:

258 (a) a state officer, employee, agency, department, division, bureau, board, commission,  
259 council, authority, educational institution, or any other body in the executive branch of state  
260 government;

261 (b) an agency, board, commission, council, institution member, or employee of the  
262 legislative branch of state government;

263 (c) a county, city, town, regional governing body, council, school district, local district,  
264 special service district, or municipal corporation, board, department, commission, council,  
265 agency, or any member or employee of them;

266 (d) any other body that is created by state or local authority, or that is primarily funded  
267 by or through state or local authority, or any member or employee of that body;

268 (e) a law enforcement agency or any member or employee of a law enforcement  
269 agency; and

270 (f) the judiciary and any member or employee of the judiciary.

271 (12) "Public entity" means a department, division, board, council, committee,  
272 institution, office, bureau, or other similar administrative unit of the executive branch of state  
273 government.

274 (13) "Public entity employee" means an employee of a public entity.

275 (14) "Retaliatory action" is as defined in Section 67-19a-101.

276 (15) "State institution of higher education" is as defined in Section 53B-3-102.

277 (16) "Unethical conduct" means conduct that violates a provision of Title 67, Chapter  
278 16, Utah Public Officers' and Employees' Ethics Act.

279 Section 8. Section **67-21-3** is amended to read:

280 **67-21-3. Reporting of governmental waste or violations of law -- Employer action**  
281 **-- Exceptions.**

282 (1) (a) An employer may not take adverse action against an employee because the  
283 employee, or a person authorized to act on behalf of the employee, communicates in good  
284 faith;

285 (i) ~~the [existence of any] waste or misuse of public funds, property, or manpower[ ~~or~~];~~

286 (ii) a violation or suspected violation of a law, rule, or regulation adopted under the law  
287 of this state, a political subdivision of this state, or any recognized entity of the United  
288 States[-]; or

289 (iii) as it relates to a state government employer:

290 (A) gross mismanagement;

291 (B) abuse of authority; or

292 (C) unethical conduct.

293 (b) For purposes of Subsection (1)(a), an employee is presumed to have communicated  
294 in good faith if ~~[he] the employee~~ gives written notice or otherwise formally communicates the  
295 ~~[waste, violation, or reasonable suspicion to the state auditor. This]~~ conduct described in  
296 Subsection (1)(a) to:

297 (i) a person in authority over the person alleged to have engaged in the conduct  
298 described in Subsection (1)(a);

299 (ii) the attorney general's office;

300 (iii) law enforcement, if the conduct is criminal in nature;

301 (iv) if the employee is a public entity employee, public body employee, legislative  
302 employee, or a judicial employee:

303 (A) the state auditor's office;

304 (B) the president of the Senate;

305 (C) the speaker of the House of Representatives;

306 (D) the governor's office;

307 (E) the state court administrator; or

308 (F) the Division of Finance;

309 (v) if the employee is a public entity employee, but not an employee of a state

310 institution of higher education, the director of the Division of Purchasing and General Services;

311 (vi) if the employee is a political subdivision employee:

312 (A) the legislative body, or a member of the legislative body, of the political

313 subdivision;

314 (B) the governing body, or a member of the governing body, of the political

315 subdivision;

316 (C) the top executive of the political subdivision; or

317 (D) any government official with authority to audit the political subdivision or the

318 applicable part of the political subdivision; or

319 (vii) if the employee is an employee of a state institution of higher education:

320 (A) the State Board of Regents or a member of the State Board of Regents;

321 (B) the commissioner of higher education;

322 (C) the president of the state institution of higher education where the employee is

323 employed; or

324 (D) the entity that conducts audits of the state institution of higher education where the

325 employee is employed.

326 (c) The presumption described in Subsection (1)(b) may be rebutted by showing that

327 the employee knew or reasonably ought to have known that the report is malicious, false, or

328 frivolous.

329 (2) An employer may not take adverse action against an employee because an

330 employee participates or gives information in an investigation, hearing, court proceeding,

331 legislative or other inquiry, or other form of administrative review held by the public body.

332 (3) An employer may not take adverse action against an employee because the

333 employee has objected to or refused to carry out a directive that the employee reasonably

334 believes violates a law of this state, a political subdivision of this state, or the United States, or

335 a rule or regulation adopted under the authority of the laws of this state, a political subdivision

336 of this state, or the United States.

337 (4) An employer may not implement rules or policies that unreasonably restrict an

338 employee's ability to document ~~[the existence of any]:~~

339 (a) the waste or misuse of public funds, property, or manpower~~[, or a];~~

340 (b) a violation or suspected violation of any ~~[laws, rules, or regulations.]~~ law, rule, or  
341 regulation; or

342 (c) as it relates to a state government employer:

343 (A) gross mismanagement;

344 (B) abuse of authority; or

345 (C) unethical conduct.

346 Section 9. Section **67-21-3.5** is enacted to read:

347 **67-21-3.5. Administrative review of adverse action against a public entity**  
348 **employee.**

349 (1) A public entity employee who believes that the employee's employer has taken  
350 retaliatory action against the employee in violation of this chapter may file a grievance with the  
351 Career Service Review Office in accordance with Section 67-19a-402.5 and subject to Section  
352 67-21-4.

353 (2) If the Career Service Review Office determines that retaliatory action is taken in  
354 violation of this chapter against the public entity employee, the Career Service Review Office  
355 may order:

356 (a) reinstatement of the public entity employee at the same level held by the public  
357 entity employee before the retaliatory action;

358 (b) the payment of back wages;

359 (c) full reinstatement of benefits;

360 (d) full reinstatement of other employment rights; or

361 (e) if the retaliatory action includes failure to promote, as described in Subsection  
362 67-19a-101(8)(d), a pay raise that results in the employee receiving the pay that the employee  
363 would have received if the person had been promoted.

364 (3) A public entity employer has the burden to prove by substantial evidence that the  
365 public entity employer's action was justified.

366 (4) A public entity employee or public entity employer may appeal a determination of  
367 the Career Service Review Office as provided in Section 67-19a-402.5.

368 Section 10. Section **67-21-3.6** is enacted to read:

369 **67-21-3.6. Administrative review for political subdivision employees.**

370 (1) (a) A political subdivision may adopt an ordinance to establish an independent  
371 personnel board to hear and take action on a complaint alleging adverse action.

372 (b) The ordinance described in Subsection (1)(a) shall include:

373 (i) procedures for filing a complaint and conducting a hearing; and

374 (ii) a burden of proof on the employer to establish by substantial evidence that the  
375 employer's action was justified by reasons unrelated to the employee's good faith actions under  
376 Section 67-21-3.

377 (2) If a political subdivision adopts an ordinance described in Subsection (1), a  
378 political subdivision employee may file a complaint with the independent personnel board  
379 alleging adverse action.

380 (3) If an independent personnel board finds that adverse action is taken in violation of  
381 the ordinance described in Subsection (1)(a), the independent personnel board may order:

382 (a) reinstatement of the employee at the same level as before the adverse action;

383 (b) the payment of back wages;

384 (c) full reinstatement of fringe benefits;

385 (d) full reinstatement of seniority rights; or

386 (e) if the adverse action includes failure to promote, as described in Subsection  
387 67-19a-101(8)(d), a pay raise that results in the employee receiving the pay that the employee  
388 would have received if the person had been promoted.

389 Section 11. Section **67-21-3.7** is enacted to read:

390 **67-21-3.7. Administrative review for state institution of higher education**  
391 **employees.**

392 (1) (a) A state institution of higher education may adopt a policy to establish an  
393 independent personnel board to hear and take action on a complaint alleging adverse action.

394 (b) The policy described in Subsection (1)(a) shall include:  
 395 (i) procedures for filing a complaint and conducting a hearing; and  
 396 (ii) a burden of proof on the employer to establish by substantial evidence that the  
 397 employer's action was justified by reasons unrelated to the employee's good faith actions under  
 398 Section 67-21-3.

399 (2) If a state institution of higher education adopts a policy described in Subsection (1),  
 400 an employee of the state institution of higher education may file a complaint with the  
 401 independent personnel board alleging adverse action.

402 (3) If an independent personnel board finds that adverse action is taken in violation of  
 403 the policy described in Subsection (1)(a), the independent personnel board may order:

- 404 (a) reinstatement of the employee at the same level as before the adverse action;
- 405 (b) the payment of back wages;
- 406 (c) full reinstatement of fringe benefits;
- 407 (d) full reinstatement of seniority rights; or
- 408 (e) if the adverse action includes failure to promote, as described in Subsection  
 409 67-19a-101(8)(d), a pay raise that results in the employee receiving the pay that the employee  
 410 would have received if the person had been promoted.

411 Section 12. Section **67-21-4** is amended to read:

412 **67-21-4. Choice of forum -- Remedies for employee bringing action -- Proof**  
 413 **required.**

414 ~~[(1) As used in this section, "damages" means damages for injury or loss caused by~~  
 415 ~~each violation of this chapter.]~~

416 ~~[(2) An]~~ (1) (a) Except as provided in Subsection (1)(b), and subject to Subsections  
 417 (1)(c) through (e), an employee who alleges a violation of this chapter may bring a civil action  
 418 for appropriate injunctive relief [or actual], damages, or both, within 180 days after the  
 419 occurrence of the alleged violation of this chapter.

420 (b) (i) An employee of a political subdivision that has adopted an ordinance described  
 421 in Section 67-21-3.6:

422 (A) may bring a civil action described in Subsection (1)(a) within 180 days after the  
423 day on which the employee has exhausted administrative remedies; and

424 (B) may not bring a civil action described in Subsection (1)(a) until the employee has  
425 exhausted administrative remedies.

426 (ii) An employee of a state institution of higher education that has adopted a policy  
427 described in Section 67-21-3.7:

428 (A) may bring a civil action described in Subsection (1)(a) within 180 days after the  
429 day on which the employee has exhausted administrative remedies; and

430 (B) may not bring a civil action described in Subsection (1)(a) until the employee has  
431 exhausted administrative remedies.

432 (c) A public entity employee who is not a legislative employee or a judicial employee  
433 may bring a claim of retaliatory action by selecting one of the following methods:

434 (i) filing a grievance with the Career Service Review Office in accordance with Section  
435 67-19a-402.5; or

436 (ii) bringing a civil action for appropriate injunctive relief, damages, or both, within  
437 180 days after the occurrence of the alleged violation of this chapter.

438 (d) A public entity employee who files a grievance under Subsection (1)(c)(i):

439 (i) may not, at any time, bring a civil action in relation to the subject matter of the  
440 grievance;

441 (ii) may seek a remedy described in Subsection 67-21-3.5(2); and

442 (iii) waives the right to seek a remedy or a type of damages not included in Subsection  
443 67-21-3.5(2).

444 (e) A public entity employee who files a civil action under Subsection (1)(c)(ii) may  
445 not, at any time, file a grievance with the Career Service Review Office in relation to the  
446 subject matter of the civil action.

447 ~~[(3)]~~ (2) An ~~[action begun]~~ employee who brings a civil action under this section ~~[may~~  
448 ~~be brought]~~ shall bring the action in the district court for the county where the alleged violation  
449 occurred, the county where the complainant resides, or the county where the person against



450 whom the civil complaint is filed resides or has ~~[his]~~ the person's principal place of business.

451 ~~[(4) To prevail in an action brought under the authority of this section, the employee~~  
452 ~~shall establish, by a preponderance of the evidence, that the employee has suffered an adverse~~  
453 ~~action because the employee, or a person acting on his behalf engaged or intended to engage in~~  
454 ~~an activity protected under Section 67-21-3.]~~

455 (3) To prevail in an action brought under this section, the employer shall prove by  
456 substantial evidence that the employer's action was justified.

457 Section 13. Section **67-21-5** is amended to read:

458 **67-21-5. Court orders for violation of chapter.**

459 (1) A court, in rendering a judgment in an action brought under this chapter, may order  
460 reinstatement of the employee at the same level, the payment of back wages, full reinstatement  
461 of fringe benefits and seniority rights, ~~[actual]~~ damages, or any combination of these remedies.

462 (2) A court shall ~~[also]~~ award the complainant all or a portion of the costs of litigation,  
463 which are defined to include reasonable attorney fees and witness fees, if the court determines  
464 that the ~~[award is appropriate]~~ complainant prevails.

465 Section 14. Section **67-21-6** is amended to read:

466 **67-21-6. Civil fine.**

467 (1) (a) A person who violates this chapter is liable for a civil fine of not more than  
468 \$500.

469 (b) The person who takes an adverse action against an employee in violation of this  
470 chapter, and not the public body that employs the employee, shall, after receiving notice and an  
471 opportunity to be heard, pay the civil fine under this Subsection (1).

472 (c) If a person is ordered to pay a civil fine under this Subsection (1), the employer may  
473 dismiss the person who took the adverse action in violation of this chapter.

474 (2) A civil fine ~~[which is]~~ ordered under this chapter shall be submitted to the state  
475 treasurer for deposit in the General Fund.

476 (3) The civil fine described in this section may be imposed if a violation of this chapter  
477 is found by:

478           (a) an independent personnel board described in Subsection 67-21-3.6(1)(a) or  
479 67-21-3.7(1)(a);

480           (b) the Career Service Review Office; or

481           (c) a court.

482           Section 15. Section **67-21-9** is amended to read:

483           **67-21-9. Notice of contents of this chapter -- Posting.**

484           (1) An employer shall post notices and use other appropriate means to keep employees  
485 informed of their protections and obligations under this chapter.

486           (2) Upon request by an employee, or when an employee alleges an adverse action, the  
487 employer shall provide the employee with a copy of this chapter.

488           Section 16. Section **67-21-10** is enacted to read:

489           **67-21-10. False accusations.**

490           (1) An employee violates this chapter if the employee knowingly makes a false  
491 accusation against an employer under this chapter.

492           (2) An employee who violates Subsection (1), is subject to:

493           (a) a fine not to exceed \$5,000; and

494           (b) dismissal from employment.

495           Section 17. **Coordinating S.B. 95 with H.B. 193 -- Substantive amendments.**

496           If this S.B. 95 and H.B. 193, Utah State Employment Amendments, both pass and  
497 become law, it is the intent of the Legislature that the Office of Legislative Research and  
498 General Counsel, in preparing the Utah Code database for publication, modify Subsection  
499 67-21-3.5(2)(b) to read as follows: "(b) the payment of back wages, in accordance with  
500 Subsection 67-19a-406(5)(b);".