

## SB0095S02 compared with SB0095

~~deleted text~~ shows text that was in SB0095 but was deleted in SB0095S02.

inserted text shows text that was not in SB0095 but was inserted into SB0095S02.

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Senator Stuart C. Reid proposes the following substitute bill:

### WHISTLEBLOWER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stuart C. Reid**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ empowers the Career Service Review Office to review a grievance by a public entity employee who alleges that adverse action was taken against the public entity employee in retaliation for reporting wasteful or wrongful actions;
- ▶ outlines the grievance procedure for a public entity employee;
- ▶ protects an employee from adverse action for reporting wasteful or wrongful

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conduct;

- ▶ ~~{describes when the exhaustion of administrative remedies is required}~~ requires a public entity employee who brings a claim of retaliatory action to choose the forum in which to assert the claim;
- ▶ provides for a political subdivision or a state institution of higher education to create an administrative procedure for an employee to file a complaint;
- ▶ shifts the burden of proof to the employer to prove that a communication was not made in good faith;
- ▶ permits the award of costs and attorney fees to a party that prevails in court;
- ▶ increases fines imposed under the chapter and addresses who pays the fines;
- ▶ requires an employer to provide a copy of the chapter to an employee under certain circumstances;
- ▶ addresses false accusations; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{None}~~ This bill coordinates with H.B. 193, Utah State Employment Amendments, by providing substantive amendments.

### Utah Code Sections Affected:

AMENDS:

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

**67-19a-202**, as repealed and reenacted by Laws of Utah 2010, Chapter 249

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

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

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

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

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

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

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

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

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

ENACTS:

67-19a-402.5, Utah Code Annotated 1953

67-21-3.5, Utah Code Annotated 1953

67-21-3.6, Utah Code Annotated 1953

67-21-3.7, Utah Code Annotated 1953

67-21-10, Utah Code Annotated 1953

### Utah Code Sections Affected by Coordination Clause:

67-21-3.5, Utah Code Annotated 1953

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

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

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

As used in this chapter:

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

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

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

(4) "Grievance" means:

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

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

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

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

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

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

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

(a) dismiss the employee;

(b) reduce the employee's compensation;

(c) fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;

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

(e) cause the employee to resign by subjecting the employee to conditions that a reasonable person would consider intolerable; or

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

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

(a) to whom an employee reports; or

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

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

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

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

(i) a dismissal;

(ii) a demotion;

(iii) a suspension;

(iv) a reduction in force;

(v) a dispute concerning abandonment of position;

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

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

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

(A) long-term disability insurance;

(B) medical insurance;

(C) dental insurance;

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- (D) post-retirement health insurance;
- (E) post-retirement life insurance;
- (F) life insurance;
- (G) defined contribution retirement;
- (H) defined benefit retirement; and
- (I) a leave benefit.

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

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

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

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

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

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

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

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

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

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

- (a) public applicants for a position with the state's work force;
- (b) public employees of the state's political subdivisions;
- (c) public employees covered by other grievance procedures; or
- (d) employees of state institutions of higher education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) request a reasonable amount of time during work hours to confer with the representative and prepare the grievance; and

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

(2) The state shall allow employees to attend and testify at the grievance hearing as

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witnesses if the employee has given reasonable advance notice to the employee's immediate supervisor.

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

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

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

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

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

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

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

(1) A reporting employee who ~~has a~~ desires to assert on administrative grievance of retaliatory action:

(a) shall submit the grievance in writing within ~~10~~ 20 days after the day on which the retaliatory action occurs;

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

(c) is ~~required to comply with Section 63G-7-402 before appealing a grievance to district court~~ subject to the provisions of Section 67-24-4.

(2) (a) When a reporting employee files a grievance with the administrator under Subsection (1), the administrator shall initially determine:

(i) whether the reporting employee is entitled, under this chapter and Chapter 21, Utah Protection of Public Employees Act, to bring the grievance and use the grievance procedure;

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(ii) whether the office has authority to review the grievance;

(iii) whether, if the alleged grievance were found to be true, the reporting employee would be entitled to relief under Subsection 67-21-3.5(2); and

(iv) whether the reporting employee has been directly harmed.

(b) To make the determinations described in Subsection (2)(a), the administrator may:

(i) hold an initial hearing, where the parties may present oral arguments, written arguments, or both; or

(ii) conduct an administrative review of the grievance.

(3) (a) If the administrator holds an initial hearing, the administrator shall issue a written decision within 15 days after the day on which the hearing is adjourned.

(b) If the administrator chooses to conduct an administrative review of the grievance, the administrator shall issue the written decision within 15 days after the day on which the administrator receives the grievance.

(4) (a) If the administrator determines the office has authority to review the grievance, the administrator shall provide for an evidentiary hearing in accordance with Section 67-19a-404.

(b) The administrator may dismiss the grievance, without holding a hearing or taking evidence, if the administrator:

(i) finds that, even if the alleged grievance were found to be true, the reporting employee would not be entitled to relief under Subsection 67-21-3.5(2); and

(ii) provides the administrator's findings, in writing, to the reporting employee.

(c) The office shall comply with Chapter 21, Utah Protection of Public Employees Act, in taking action under this section.

(5) A decision reached by the office in reviewing a retaliatory action grievance from a reporting employee

~~(a) } may } be reviewed de novo in district court; and~~

~~(b) may not } be appealed directly to the Utah Court of Appeals.~~

(6) (a) Except as provided in Subsection (6)(b),  ~~} a district court that reviews a decision reached by the office in a retaliatory action grievance } an appellate court~~ may award costs and attorney fees, accrued at the  ~~} district } appellate~~ court level, to the prevailing party.

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



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

### **67-21-2. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) an agency, board, commission, council, institution member, or employee of the

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legislative branch of state government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(~~iii~~)A) gross mismanagement;

(~~iv~~)B) abuse of authority; or

(~~v~~)C) unethical conduct.

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

- (i) a person in authority over the person alleged to have engaged in the conduct described in Subsection (1)(a);
- (ii) the attorney general's office;
- (iii) law enforcement, if the conduct is criminal in nature;
- (iv) if the employee is a public entity employee, public body employee, legislative employee, or a judicial employee:
  - (A) the state ~~auditor~~ auditor's office;
  - (B) the president of the Senate;
  - (C) the speaker of the House of Representatives;
  - (D) the governor's office;
  - (E) the state court administrator; or
  - (F) the Division of Finance;
- (v) if the employee is a public entity employee, but not an employee of a state institution of higher education, the Director of the Division of Purchasing and General Services:
  - (vi) if the employee is a political subdivision employee:
    - (A) the legislative body, or a member of the legislative body, of the political subdivision;
    - (B) the governing body, or a member of the governing body, of the political subdivision;
    - (C) the top executive of the political subdivision; or
    - (D) any government official with authority to audit the political subdivision or the applicable part of the political subdivision; or
  - (vii) if the employee is an employee of a state institution of higher education:
    - (A) the State Board of Regents or a member of the State Board of Regents;
    - (B) the commissioner of higher education;
    - (C) the president of the state institution of higher education where the employee is

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employed; or

(D) the entity that conducts audits of the state institution of higher education where the employee is employed.

(c) The presumption described in Subsection (1)(b) may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document ~~[the existence of any]~~:

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

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

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

~~(fct)A~~ gross mismanagement;

~~(fd)B~~ abuse of authority; or

~~(fe)C~~ unethical conduct.

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

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

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

(2) If the Career Service Review Office determines that retaliatory action is taken in

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violation of this chapter against the public entity employee, the Career Service Review Office may order:

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

(b) the payment of back wages;

(c) full reinstatement of benefits; ~~} or }~~

(d) full reinstatement of other employment rights ~~} }~~ or

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

(3) A public entity employer has the burden to prove by substantial evidence that the public entity employer's action was justified ~~} by reasons unrelated to the public entity employee's good faith actions under Section 67-21-3 }.~~

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

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

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

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

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

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

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

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

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

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

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(b) the payment of back wages;

(c) full reinstatement of fringe benefits;~~or~~

(d) full reinstatement of seniority rights;~~or~~

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

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

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

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

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

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

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

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

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

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

(b) the payment of back wages;

(c) full reinstatement of fringe benefits;~~or~~

(d) full reinstatement of seniority rights;~~or~~

~~or~~ or

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

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

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67-21-4. ~~{Remedies}~~ Choice of forum -- Remedies for employee bringing action --  
Proof required.

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

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

~~—— (a) the exhaustion of administrative action under this chapter, including appeals of administrative action, if the employee is a public entity employee;~~

~~—— (b) the exhaustion of administrative action for a political subdivision employee of a political subdivision that adopts an ordinance described in Section 67-21-3.6;~~

~~—— (c) the exhaustion of administrative action for an employee of an institution of higher education that adopts a policy described in Section 67-21-3.7; or~~

~~—— (d) } the occurrence of the alleged violation of this chapter ~~{}~~. ~~{ for }~~~~

~~(b) (i) ~~{ a political subdivision }~~ An employee of a political subdivision that has ~~{ not }~~ adopted an ordinance described in Section 67-21-3.6 ~~};~~~~

~~—— (ii) ~~an~~};~~

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

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

~~(ii) An employee of a state institution of higher education that has ~~{ not }~~ adopted a policy described in Section 67-21-3.7 ~~};~~~~

~~—— (iii) ~~};~~~~

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

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

~~(c) A public entity employee who is not a legislative employee ~~};~~ or ~~{~~~~

~~—— (iv) ~~};~~ a judicial employee may bring a claim of retaliatory action by selecting one of the~~

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following methods:

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

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

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

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

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

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

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

~~[(3)] (2) An [action begun] employee who brings a civil action under this section [may be brought] shall bring the action in the district court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has [his] the person's principal place of business.~~

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

~~(3) To prevail in an action brought under this section, the employer shall prove by substantial evidence that the employer's action was justified; by a reason unrelated to the employee's good faith action under Subsection 67-21-3(1)(a).~~

~~— (4) Nothing in this section prohibits an employee from bringing a civil action against the employee's employer or former employer during the time that an administrative action is pending under this section, if the issues in the civil action are outside of the jurisdiction of the administrative action.~~

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

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



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

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

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

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

(1) (a) A person who violates this chapter is liable for a civil fine of not more than ~~{}~~\$500 ~~{}~~ \$5,000.

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

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

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

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

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

(b) the Career Service Review Office; or

(c) a court.

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

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

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

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

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

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

## SB0095S02 compared with SB0095

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

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

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

(b) dismissal from employment.

†

### Legislative Review Note

— as of ~~2-6-13 11:02 AM~~

— } Section 17. Coordinating S.B. 95 with H.B. 193 -- Substantive amendments.

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