

Texas Health Care Program Fraud Prevention Act

(Tex. Human Res. Code § 36.001–36.117)ⁱ

§ 36.001. Definitions

In this chapter:

- (1) “Child health plan program” means the child health plan program established under Chapters 62 and 63, Health and Safety Code.
- (1-a) “Claim” means a written or electronically submitted request or demand that:
 - (A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a health care recipient as reimbursable under a health care program, without regard to whether the money that is requested or demanded is paid; or
 - (B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under a health care program.
- (2) “Documentary material” means a record, document, or other tangible item of any form, including:
 - (A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a health care recipient;
 - (B) a medical, professional, or business record relating to:
 - (i) the provision of a product or service to a health care recipient; or
 - (ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a health care recipient as needed to verify the rate or amount;
 - (C) a record required to be kept by an agency that regulates health care providers; or
 - (D) a record necessary to disclose the extent of services a provider furnishes to health care recipients.
- (3) “Fiscal agent” means:
 - (A) a person who, through a contractual relationship with a state agency, receives, processes, and pays a claim under a health care program; or
 - (B) the designated agent of a person described by Paragraph (A).
- (4) “Health care practitioner” means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.
- (4-a) “Health care program” means
 - (A) the Medicaid program;
 - (B) the child health plan program; and
 - (C) the Healthy Texas Women program
- (4-b) “Health care recipient” means an individual on whose behalf a person claims or receives a payment from a health care program or a fiscal agent, without regard to whether the individual was eligible for benefits under the health care program.
- (4-c) “Healthy Texas Women program” means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248 and that is intended to expand access to preventive health and family planning services for women in this state.

- (5) “Managed care organization” means a person who is authorized or otherwise permitted by law to arrange for or provide a managed care plan.
- (5-a) “Material” means having a natural tendency to influence or to be capable of influencing.
- (6) “Medicaid program” means the state Medicaid program.
- (7) “Medicaid recipient” means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.
- (7-a) “Obligation” means a duty, whether or not fixed, that arises from:
- (A) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;
 - (B) a fee-based or similar relationship;
 - (C) a statute or regulation; or
 - (D) the retention of any overpayment.
- (8) “Physician” means a physician licensed to practice medicine in this state.
- (9) “Provider” means a person who participates in or who has applied to participate in a health care program as a supplier of a product or service and includes:
- (A) a management company that manages, operates, or controls another provider;
 - (B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;
 - (C) an employee of a provider;
 - (D) a managed care organization; and
 - (E) a manufacturer or distributor of a product for which a health care program provides reimbursement.
- (10) “Service” includes care or treatment of a health care recipient.
- (11) “Signed” means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.
- (12) “Unlawful act” means an act declared to be unlawful under Section 36.002.

§ 36.0011. Culpable Mental State

- (a) For purposes of this chapter, a person acts “knowingly” with respect to information if the person:
- (1) has knowledge of the information;
 - (2) acts with conscious indifference to the truth or falsity of the information; or
 - (3) acts in reckless disregard of the truth or falsity of the information.
- (b) Proof of the person’s specific intent to commit an unlawful act under Section 36.002 is not required in a civil or administrative proceeding to show that a person acted “knowingly” with respect to information under this chapter.

§ 36.002. Unlawful Acts

A person commits an unlawful act if the person:

- (1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;
- (2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under a health care program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by a health care program, including certification or recertification as:

- (i) a hospital;
- (ii) a nursing facility or skilled nursing facility;
- (iii) a hospice;
- (iv) an ICF-IID;
- (v) an assisted living facility; or
- (vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program;

(5) except as authorized under a health care program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the program;

(6) knowingly presents or causes to be presented a claim for payment under a health care program for a product provided or a service rendered by a person who:

- (A) is not licensed to provide the product or render the service, if a license is required; or
- (B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under a health care program for:

- (A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;
- (B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or
- (C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under a health care program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) conspires to commit a violation of Subdivision (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

(10) is a managed care organization that contracts with the commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under a health care program and knowingly:

- (A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;
- (B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

- (C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the program;
- (11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;
- (12) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under a health care program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under a health care program; or
- (13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

§ 36.003. Documentary Material in Possession of State Agency

- (a) A state agency, including the commission, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Family and Protective Services, shall provide the attorney general access to all documentary materials of persons and health care recipients under a health care program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.
- (b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:
 - (1) an employee of the attorney general;
 - (2) an agency of this state, the United States, or another state;
 - (3) a criminal district attorney, district attorney, or county attorney of this state;
 - (4) the United States attorney general;
 - (5) a state or federal grand jury;
 - (6) a political subdivision of this state; or
 - (7) a person authorized by the attorney general to receive the information.

§ 36.004. Immunity

Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

- (1) an employee of the attorney general;
- (2) an agency of this state, the United States, or another state;
- (3) a criminal district attorney, district attorney, or county attorney of this state;
- (4) the United States attorney general;
- (5) a state or federal grand jury;
- (6) a political subdivision of this state; or
- (7) a person authorized by the attorney general to receive the information.

§ 36.005. Suspension or Revocation of Agreement; Professional Discipline

- (a) A health and human services agency, as defined by Section 531.001, Government Code:

- (1) shall suspend or revoke:
 - (A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and
 - (B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and
- (2) may suspend or revoke:
 - (A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052; or
 - (B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under a health care program or supply or sell, directly or indirectly, a product to or under a health care program. The executive commissioner may by rule:

- (1) provide for a period of ineligibility longer than 10 years; or
- (2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the program or a beneficiary of the program.

(b-1) The period of ineligibility begins on the date on which the judgment finding the provider liable under Section 36.052 is entered by the trial court.

(b-2) Subsections (b) and (b-1) do not apply to a provider who operates a nursing facility or an ICF-IID.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C.1

(e) Notwithstanding Subsection (b-1), the period of ineligibility for an individual licensed by a health care regulatory agency or a physician begins on the date on which the determination that the individual or physician is liable becomes final.

(f) For purposes of Subsection (e), a “physician” includes a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, or a partnership composed solely of physicians.

(g) For purposes of Subsection (e), “health care regulatory agency” has the meaning assigned by Section 774.001, Government Code.

§ 36.006. Application of Other Law

The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act.

§ 36.007. Recovery of Costs, Fees, and Expenses

The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees.

§ 36.008. Use of Money Recovered

The legislature, in appropriating money recovered under this chapter, shall consider the requirements of the attorney general and other affected state agencies in investigating health care program fraud and enforcing this chapter.

§ 36.051. Injunctive Relief

- (a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.
- (b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur.

§ 36.052. Civil Remedies

- (a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:
 - (1) the amount of any payment or the value of any monetary or in-kind benefit provided under a health care program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;
 - (2) interest on the amount of the payment or the value of the benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit;
 - (3) a civil penalty of:
 - (A) not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not more than \$15,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$15,000, for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or
 - (B) not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not more than \$11,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$11,000, for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and
 - (4) two times the amount of the payment or the value of the benefit described by Subdivision (1).

(b) In determining the amount of the civil penalty described by Subsection (a)(3), the trier of fact shall consider:

- (1) whether the person has previously violated the provisions of this chapter;
- (2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;
- (3) whether the health and safety of the public or an individual was threatened by the unlawful act;
- (4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and
- (5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the amount of a payment or the value of a benefit described by Subsection (a)(1) if the trier of fact finds that:

- (1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and
- (2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

- (1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051; or
- (2) institute an action for civil remedies independently of an action for injunctive relief.

§ 36.053. Investigation

(a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that:

- (1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act;
- (2) a person is committing, has committed, or is about to commit an unlawful act; or
- (3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

- (1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;
- (2) examine under oath a person in connection with the alleged unlawful act; and
- (3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054.

(c) The office of the attorney general may not release or disclose information that is obtained under Subsection (b)(1) or (2) or any documentary material or other record derived from the information except:

- (1) by court order for good cause shown;
- (2) with the consent of the person who provided the information;

- (3) to an employee of the attorney general;
 - (4) to an agency of this state, the United States, or another state;
 - (5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C1;
 - (6) to a political subdivision of this state; or
 - (7) to a person authorized by the attorney general to receive the information.
- (d) The attorney general may use documentary material derived from information obtained under Subsection (b)(1) or (2), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
- (e) If a person fails to file a statement as required by Subsection (b)(1) or fails to submit to an examination as required by Subsection (b)(2), the attorney general may file in a district court of Travis County a petition for an order to compel the person to file the statement or submit to the examination within a period stated by court order. Failure to comply with an order entered under this subsection is punishable as contempt.
- (f) An order issued by a district court under this section is subject to appeal to the supreme court.

§ 36.054. Civil Investigative Demand

- (a) An investigative demand must:
- (1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;
 - (2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;
 - (3) prescribe a return date within which the documentary material is to be produced; and
 - (4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.
- (b) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Texas Rules of Civil Procedure.
- (c) Service of an investigative demand may be made by:
- (1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;
 - (2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or
 - (3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.
- (d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.
- (e) The office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section except:
- (1) by court order for good cause shown;
 - (2) with the consent of the person who produced the information;
 - (3) to an employee of the attorney general;
 - (4) to an agency of this state, the United States, or another state;

- (5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;1
 - (6) to a political subdivision of this state; or
 - (7) to a person authorized by the attorney general to receive the information.
- (e-1) The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.
- (f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:
- (1) the return date specified in the demand; or
 - (2) the 20th day after the date the demand is served.
- (g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.
- (h) A person who has committed an unlawful act in relation to a health care program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.
- (i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.
- (j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in a district court of Travis County a petition for an order to enforce the investigative demand.
- (k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.
- (l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.
- (m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court.

§ 36.055. Attorney General as Relator in Federal Action

To the extent permitted by 31 U.S.C. Sections 3729-3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with a health care program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

§ 36.101. Action by Private Person Authorized

- (a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.
- (b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052.

§ 36.102. Initiation of Action; Consent Required for Dismissal

(a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and, except as provided by Subsection (c-1) or (d), shall remain under seal until at least the 180th day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information.

(c-1) At the time the state intervenes, the attorney general may file a motion with the court requesting that the petition remain under seal for an extended period.

(d) The state may, for good cause shown, move the court to extend the 180-day deadline under Subsection (b) or (c). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

§ 36.1021. Standard of Proof

In an action under this subchapter, the state or person bringing the action must establish each element of the action, including damages, by a preponderance of the evidence.

§ 36.103. Answer by Defendant

A defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under this subchapter until the petition is unsealed and served on the defendant.

§ 36.104. State Decision; Continuation of Action

(a) Not later than the last day of the period prescribed by Section 36.102(c) or an extension of that period as provided by Section 36.102(d), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the person bringing the action may proceed without the state's participation. A person proceeding under this subsection may recover for an unlawful act for a period of up to six years before the date the lawsuit was filed, or for a period beginning when the unlawful act occurred until up to three years from the date the state knows or reasonably should have known facts material to the unlawful act, whichever of these two periods is longer, regardless of whether the unlawful act occurred more than six years before the date the

lawsuit was filed. Notwithstanding the preceding sentence, in no event shall a person proceeding under this subsection recover for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

(b-1) On request by the state, the state is entitled to be served with copies of all pleadings filed in the action and be provided at the state's expense with copies of all deposition transcripts. If the person bringing the action proceeds without the state's participation, the court, without limiting the status and right of that person, may permit the state to intervene at a later date on a showing of good cause.

§ 36.105. Representation of State by Private Attorney

The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

§ 36.106. Intervention by Other Parties Prohibited

A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

§ 36.107. Rights of Parties if State Continues Action

(a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

- (1) the attorney general notifies the person that the state has filed a motion to dismiss; and
- (2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

- (1) limiting the number of witnesses the person may call;
- (2) limiting the length of the testimony of witnesses called by the person;
- (3) limiting the person's cross-examination of witnesses; or
- (4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

§ 36.108. Stay of Certain Discovery

- (a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.
- (b) The court shall hear a motion to stay discovery under this section in camera.
- (c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

§ 36.109. Pursuit of Alternate Remedy by State

- (a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.
- (b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:
 - (1) the finding or conclusion has been finally determined on appeal to the appropriate court;
 - (2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or
 - (3) the finding or conclusion is not subject to judicial review.

§ 36.110. Award to Private Plaintiff

- (a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.
 - (a-1) If the state does not proceed with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 25 percent but not more than 30 percent of the proceeds of the action. The entitlement of a person under this subsection is not affected by any subsequent intervention in the action by the state in accordance with Section 36.104(b-1).
- (b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a Texas or federal criminal or civil hearing, in a Texas or federal legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than 10 percent of the proceeds of

the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action or the claim is settled.

(d) In this section, "proceeds of the action" includes proceeds of a settlement of the action.

§ 36.111. Reduction of Award

(a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

§ 36.112. Award to Defendant for Frivolous Action

Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

§ 36.113. Certain Actions Barred

(a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) The court shall dismiss an action or claim under this subchapter, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a Texas legislative or administrative report, or other Texas hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who:

(1) prior to a public disclosure under this subsection, has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or

(2) has knowledge that is independent of and materially adds to the publicly disclosed allegation or transactions and who has voluntarily provided the information to the state before filing an action under this subchapter.

(c) Repealed by Acts 2013, 83rd Leg., ch. 572 (S.B. 746), § 6.

§ 36.114. State Not Liable for Certain Expenses

The state is not liable for expenses that a person incurs in bringing an action under this subchapter.

§ 36.115. Retaliation Against Person Prohibited

(a) A person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of a lawful act taken by the person or associated others in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, or other efforts taken by the person to stop one or more violations of Section 36.002 is entitled to:

- (1) reinstatement with the same seniority status the person would have had but for the discrimination; and
- (2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

(c) A person must bring suit on an action under this section not later than the third anniversary of the date on which the cause of action accrues. For purposes of this section, the cause of action accrues on the date the retaliation occurs.

§ 36.116. Sovereign Immunity Not Waived

Except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

§ 36.117. Attorney General Compensation

The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter.

ⁱ Last updated August 2023.