

Texas False Claims Act draft bill

Chapter 140C is a proposed designation, subject to Council assignment. This is proposed language, not an introduced bill or a statement of existing law.

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for false claims and knowing retention of unearned payments involving state and local government funds; providing civil penalties; authorizing private civil actions; providing protection against retaliation; waiving governmental immunity for certain retaliation actions; providing confidentiality; creating a dedicated account.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 140C to read as follows:

CHAPTER 140C. FALSE CLAIMS AND UNEARNED PAYMENTS INVOLVING STATE AND LOCAL GOVERNMENT FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 140C.001. SHORT TITLE. This chapter may be cited as the Texas False Claims Act.

Sec. 140C.002. DEFINITIONS. In this chapter:

(1) "Affected governmental entity" means a governmental entity whose money, property, or legally protected financial interest is involved in an alleged violation of this chapter.

(2) "Claim" means a request or demand for money or property, whether under a contract, grant, or otherwise and regardless of title, that is presented to:

(A) an officer, employee, or agent of a governmental entity; or

(B) a contractor, subcontractor, grantee, subgrantee, or other recipient if the money or property is to be used on behalf of a governmental entity or to advance its program or interest and a governmental entity provides or has provided any portion of the money or property requested or will reimburse any portion of it.

(3) "Covered agreement" means a written contract or grant agreement providing governmental money or property, including a bid, proposal, application, specification, or modification incorporated into the agreement as a binding term.

(4) "Distributable proceeds" means amounts actually collected as damages, penalties, or associated interest under this chapter, excluding separately awarded fees, expenses, and costs and an amount required by federal law or a federal grant condition to be returned to the United States before distribution under this chapter.

(5) "Governmental attorney" means the attorney general or a local prosecuting authority authorized to act in the particular action under this chapter.

(6) "Governmental entity" means this state, a state agency or institution of higher education, a political subdivision, or an agency, department, instrumentality, or public corporation of a political subdivision. The term includes a municipality, county, school district, hospital district, transit authority, special district, regional governmental authority, and a governmental entity created by an interlocal agreement.

(7) "Knowingly" means having actual knowledge, deliberately avoiding knowledge of the truth or falsity, or acting in reckless disregard of the truth or falsity. Except where this chapter expressly requires actual knowledge or a specific intent, proof of specific intent to defraud is not required. Negligence or an innocent mistake, without more, does not satisfy this definition.

(8) "Local governmental entity" means a governmental entity other than this state or a state agency or institution of higher education.

(9) "Local prosecuting authority" means a city attorney, county attorney, district attorney, or criminal district attorney authorized to represent an affected local governmental entity in civil litigation, or an attorney designated by that entity's governing body to represent it in civil litigation under this chapter.

(10) "Material" means having a natural tendency to influence, or being capable of influencing, the payment or receipt of money or property, subject to Section 140C.052.

(11) "Obligation" means an established duty, whether or not the amount is fixed, to pay or transmit money or property, arising from a contract, grant, license, fee relationship, statute, rule, or retention of an overpayment. The term does not include a merely potential fine or contingent liability. An obligation attributable solely to performance failure described by Section 140C.053 is subject exclusively to that section as provided by Section 140C.053(h).

(12) "Person" means an individual or a corporation, partnership, association, trust, limited liability company, nonprofit organization, or other private legal entity. The term does not include a governmental entity or an officer or employee sued in an official capacity. Receipt of public funds does not by itself make a private entity a governmental entity.

(13) "Relator" means a person who brings an action under Subchapter D.

(14) "Responsible official" means the attorney general or an official of that office or a local prosecuting authority charged with investigating or bringing an action concerning the violation. The term excludes an official who participated in the violation and an official whose sole responsibility is routine contract administration.

Sec. 140C.003. COVERED FUNDS AND EXCLUSIONS. (a) This chapter applies to money or property of a governmental entity and federal or state money or property that a governmental entity administers, holds, distributes, or is obligated to safeguard or repay.

(b) A claim includes an invoice, reimbursement request, grant draw, payment application, or request for approval that is a prerequisite to payment. A request involving public and private funds is covered to the extent of the governmental financial interest. Liability does not require that the claim be paid.

(c) A claim does not include a demand for money that a governmental entity previously paid to an individual as compensation for government employment or as an income subsidy without a restriction on the individual's use of that money. This exclusion does not exclude a false request to obtain that compensation or subsidy from the governmental entity.

(d) This chapter does not apply to a claim, record, or statement concerning assessment, collection, or payment of a tax. This exclusion does not exclude a procurement or grant claim merely because the expenditure is financed by tax revenue.

Sec. 140C.004. EXISTING HEALTH CARE LAW. (a) Chapter 36, Human Resources Code, and its rights, remedies, procedures, and distributions are preserved.

(b) Liability under Subchapter B and an action under Subchapter C or D do not apply to a claim for, or retention of, a payment under a health care program as defined by Section 36.001, Human Resources Code, or to conduct constituting an unlawful act under Chapter 36 of that code. Covered health care program misconduct must be pursued under that chapter. Separate conduct and a distinct financial interest outside that chapter may be pursued under this chapter, subject to Section 140C.305. A governmental entity's health care function does not alone exclude its unrelated procurement or grant funds.

(c) Existing retaliation remedies under Section 36.115, Human Resources Code, and Chapter 554, Government Code, are preserved. Duplicate compensation for the same injury is prohibited.

Sec. 140C.005. IMMUNITY AND OTHER REMEDIES. (a) Except as expressly provided by Section 140C.252, this chapter does not authorize an action against a governmental entity or an officer or employee in an official capacity and does not waive sovereign, governmental, or official immunity.

(b) This chapter does not limit an existing contractual, administrative, criminal, audit, or civil remedy. A private contractor may not claim the exclusion in Subsection (a) solely because it performs governmental work. Other immunity recognized by law is preserved except as expressly provided by this chapter.

(c) Chapter 84 does not limit a private person's liability established under Subchapter B. An officer, director, employee, or volunteer is not individually liable solely because of that status; the plaintiff must prove that individual's own conduct and the knowledge or intent required by the applicable provision.

Sec. 140C.006. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that:

- (1) recovery of misused state and local public funds serves a public purpose;
- (2) private persons can supply information, investigation, and litigation services that assist recovery when governmental enforcement resources or independence are insufficient;
- (3) an award under this chapter is consideration for those services and the recovery obtained through a conditional partial assignment of a statutory financial claim, and is not a gratuitous payment;
- (4) governmental review, intervention, judicial approval of disposition, proportionate awards, reporting, and restrictions on distribution retain public control and secure a public benefit; and
- (5) a binding promise of specified work or a measurable result should carry an enforceable duty to account for payment attributable to a material failure, with actual knowledge, a cure opportunity, credit for value received, and remedies proportionate to culpability.

Sec. 140C.007. FUTURE AGREEMENT TERMS. (a) A governmental entity entering into, renewing, or materially amending a covered agreement subject to Section 140C.053 shall identify in the agreement each binding performance commitment, the applicable measure and deadline, any agreed cure period and allocation of performance risk, and the payment or method of allocating payment attributable to that commitment. The agreement shall notify the recipient of the disclosure and repayment duty under Section 140C.053.

(b) This section does not require an outcome guarantee when the entity purchases specified efforts or services. Failure to include the notice or allocation does not excuse liability for an otherwise proved binding commitment; the court shall determine the unearned portion under Section 140C.053(e). Terms required by controlling federal law remain controlling.

SUBCHAPTER B. LIABILITY AND PENALTIES

Sec. 140C.051. UNLAWFUL ACTS. A person is liable under this chapter if the person:

- (1) knowingly presents or causes another to present a materially false or fraudulent claim for payment or approval;
- (2) knowingly creates, uses, or causes another to create or use a false record or statement material to a false or fraudulent claim;
- (3) knowingly conspires with another to commit a violation described by Subdivision (1), (2), (4), (5), (6), (7), or (9);
- (4) possesses or controls money or property used or to be used by a governmental entity and knowingly delivers or causes another to deliver less than all of the money or property required to be delivered;
- (5) is authorized to certify receipt of property used or to be used by a governmental entity and, intending to defraud that entity, certifies receipt without knowing the certification is true;

(6) knowingly buys or receives as security public property from an officer or employee who lacks lawful authority to sell or pledge it;

(7) knowingly creates or uses a false record or statement material to an obligation to pay or transmit money or property to a governmental entity, or knowingly conceals or knowingly and improperly avoids or reduces that obligation, subject to Section 140C.053(h);

(8) violates the disclosure or repayment duty for unearned performance payments established by Section 140C.053; or

(9) obtains a covered agreement by a knowingly false material representation or omission, including a promise made with no intent to perform when made, on which the awarding entity relies, and presents or causes another to present a claim under that agreement. A statement of present capacity that the person knows is materially false may satisfy this subdivision. Subsequent nonperformance alone does not prove fraudulent intent when the promise was made.

Sec. 140C.052. **FALSITY AND MATERIALITY.** (a) A claim may be materially false or fraudulent if it represents that a deliverable, outcome, unit of service, labor cost, or other cost was provided, achieved, incurred, or payable when that representation is materially false. A materially false certification of performance or compliance may establish liability.

(b) An omission may render a representation misleading concerning noncompliance with a material legal or contractual requirement. Designation as a condition of payment is relevant but is neither necessary nor sufficient to establish materiality.

(c) Materiality is a demanding standard determined from all the circumstances, including significance of the noncompliance, payment terms, likely or actual effect on payment or award, and governmental practices. Minor or insubstantial noncompliance alone is insufficient. Actual payment despite actual knowledge of the relevant violation is very strong evidence against materiality. The court shall consider the explanation for continued payment, including a demonstrated need to preserve essential services while alternatives were arranged. Knowledge held solely by a participant in the violation is not by itself the governmental entity's informed payment decision. Neither knowledge nor an allegation of conflict automatically resolves materiality.

(d) Failure to achieve an aspirational goal, a good-faith contract dispute, or funding from more than one source does not by itself establish a violation. Knowing duplicate charging of an identical cost, labor hour, or unit of service may establish a violation if applicable payment or allocation terms prohibit that charge and the falsehood is material. Lawful cost sharing and properly allocated funding are permitted.

(e) Knowledge is evaluated in light of the person's understanding and beliefs when the act occurred. A later-developed interpretation does not defeat proof that the person then knew a claim or record was false. Award-related materiality under Section 140C.051(9) concerns the award decision; actual reliance required by that subdivision must also be proved.

(f) Section 140C.053 establishes a separate substantive duty for unearned performance payments. Its application does not depend on a false representation or the materiality of a false representation under this section.

Sec. 140C.053. **UNEARNED PERFORMANCE PAYMENTS.** (a) An enforceable objective is specific work, a deliverable, a unit of service, or an objectively measurable outcome stated in a covered agreement as a binding commitment for which governmental funds are provided. A commitment need not be labeled a condition of payment. A general purpose or a goal expressly described as aspirational is not an enforceable objective. A promise of efforts or services does not imply a guarantee of a result beyond that promise.

(b) A payment is unearned to the extent attributable to material failure to meet an enforceable objective by the agreed deadline, taking account of Subsections (d) and (e). A material failure must concern an important

binding commitment and a substantial shortfall in magnitude or duration. An immaterial variance does not create liability.

(c) A recipient with actual knowledge of the material failure and that an identified or reasonably ascertainable portion of payment is unearned shall disclose the failure and that portion in writing to the paying entity and the attorney general not later than 30 days after obtaining that knowledge. The recipient shall cure the failure or return the unearned portion not later than the later of:

(1) 60 days after obtaining that knowledge; or

(2) the expiration of a cure period expressly provided by the agreement.

(d) An agreed extension, force majeure provision, governmental delay, lawful modification, or other applicable term excusing or allocating performance risk shall be given effect. A person is not liable under this section to the extent of a reasonable, good-faith dispute about performance or allocation that the person timely discloses with its factual and contractual basis. Unsupported denial or an interpretation developed after the person knowingly retained unearned funds does not establish that protection. A lawful modification before the applicable deadline may change future performance. A modification may not retroactively extinguish accrued liability under this chapter except through Section 140C.153.

(e) The plaintiff must identify the binding commitment, measure, deadline, actual result, knowledge, expiration of the applicable period, and unearned amount. The court shall credit conforming goods, services, and other value received, payments returned, and unpaid retainage attributable to the same shortfall. Contractual unit or milestone allocations are rebuttable evidence of value. If no reasonable allocation exists, the plaintiff must prove an allocation from competent evidence. Neither the entire contract price nor the recipient's expenditures are presumed to equal the unearned portion. Cost reimbursement for work actually performed does not become unearned solely because an outcome not guaranteed by the agreement was missed.

(f) A recipient that fails to make the required disclosure or, after the applicable period, knowingly retains an unearned portion is liable for that portion once, interest under Section 140C.054(f), and fees and costs under Section 140C.203. Truthful reporting does not excuse failure to return an unearned portion. Governmental inaction or continued payment does not alone waive this statutory duty. Timely disclosure and cure or repayment satisfy this section but do not erase an independently proved fraud violation.

(g) Enhanced remedies under Section 140C.054(a) apply to a violation of this section only if the plaintiff also proves:

(1) knowing concealment of the material shortfall or unearned portion, including deliberate withholding of the disclosure required by Subsection (c) for the purpose of concealing that information, or a knowingly false material statement concerning performance or entitlement to that payment; or

(2) knowing refusal, without a reasonable good-faith basis, to return the unearned portion within 60 days after receipt of a written demand from a nonconflicted governmental attorney. The demand must identify the commitment, material failure, unearned amount and calculation, supporting records, applicable cure period, and enhanced remedies. The period may not expire before the period under Subsection (c). Timely repayment, deposit of the disputed portion into court-approved escrow pending a timely filed proceeding to resolve the dispute, or compliance with a court order staying repayment precludes enhancement under this subdivision. Losing a good-faith dispute does not by itself establish knowing refusal. A relator's demand alone does not trigger this subdivision.

(h) A claim based solely on nonperformance and receipt or retention of payment attributable to that nonperformance must be pursued exclusively under Section 140C.051(8) and this section, even if a repayment duty also arises under the agreement or another law. It may not be recast under Section 140C.051(3), (4), or (7) to avoid the actual-knowledge requirement, cure opportunity, defenses, or remedy limits. A plaintiff may separately pursue an independently proved false claim, false record, fraudulent inducement, or other unlawful

act; mere nonperformance or retention is insufficient to prove that independent act. Duplicate damages and penalties for the same loss or claim are prohibited.

(i) Section 140C.004 applies.

Sec. 140C.054. DAMAGES, INTEREST, AND CIVIL PENALTIES. (a) Except for the basic remedy under Section 140C.053(f) and as provided by Section 140C.055, a liable person shall pay three times the actual damages sustained because of the violation and a civil penalty of not less than \$14,308 or more than \$28,619 for each false claim or distinct violation not involving a claim, subject to this section.

(b) A supporting false record and multiple legal theories concerning the same claim do not multiply penalties. Separate false payment requests may constitute separate claims. For liability based on Section 140C.053, no more than one penalty may be assessed for the unearned obligation under the same agreement and performance period, unless separate independently actionable false payment claims are proved. Retention does not generate daily penalties or a penalty for each unmet objective.

(c) Actual damages must reflect the loss caused by the violation and account for conforming value received. For Section 140C.053, actual damages are the unearned portion determined under that section. Compensation for the same loss must be credited under Section 140C.305; the court shall identify the compensatory component and apply credits so that the same actual loss is compensated only once.

(d) The court shall determine penalties based on culpability, seriousness, duration, actual or threatened harm, unlawful benefit, cooperation, and the aggregate effect of penalties for the transaction. If aggregate penalties would be grossly disproportionate to those factors, the court may reduce the total, including below the statutory minimum or to zero, and shall state its reasons. Constitutional limitations independently apply. Nonprofit status alone neither excuses liability nor requires a reduction.

(e) Basic liability under Section 140C.053(f) does not carry treble damages or a civil penalty unless the additional elements of Section 140C.053(g) or an independent violation are proved. Enhancing a recovery does not add a second recovery of the same unearned portion.

(f) Interest on the unearned portion under Section 140C.053 accrues from the expiration of the applicable repayment period to judgment at the rate provided by Section 304.003, Finance Code, for postjudgment interest applicable on the date judgment is rendered. Interest before judgment is simple interest and is not trebled. Postjudgment interest is governed by that chapter. The court may not award duplicate interest for the same amount and period.

Sec. 140C.055. PROMPT DISCLOSURE AND COOPERATION. The court may reduce a damages multiplier otherwise required by Section 140C.054(a) to not less than two if the liable person voluntarily disclosed substantially all known information concerning the violation to the attorney general within 30 days after obtaining it, fully cooperated, and disclosed before a proceeding began and without actual knowledge of an existing investigation. Applicable civil penalties and Section 140C.203 remain in effect. This section does not increase basic liability under Section 140C.053(f).

SUBCHAPTER C. ACTIONS BY ATTORNEY GENERAL AND LOCAL PROSECUTING AUTHORITIES

Sec. 140C.101. STATE AUTHORITY AND LOCAL BACKSTOP. (a) The state has an independent statutory financial claim to recover funds protected by this chapter for distribution to affected governmental entities. The attorney general may investigate, bring, or intervene in an action in the name of this state to enforce that claim. This authority does not make the attorney general the legal representative of a local entity.

(b) For a claim involving only local financial interests, the attorney general may bring an action or assume primary responsibility after:

(1) an affected local entity requests state enforcement;

(2) the local prosecuting authority declines to conduct an action or fails to elect to conduct it within 60 days after receiving the complaint or a written referral identifying the alleged conduct and supporting evidence; or

(3) the court finds on specific facts that a conflict materially impairs independent local enforcement or that delaying state enforcement would create a substantial risk of loss of evidence, dissipation of recoverable assets, expiration of limitations, or other irreparable harm to the public financial interest.

(c) The attorney general may investigate during the period in Subsection (b), and may request judicial relief under Subdivision (3) without waiting for it to expire. Local disagreement, continued payment, or failure to sue alone does not establish a conflict; expiration of the election period independently permits the backstop. Timely local enforcement remains subject to intervention for good cause and judicial review under this chapter.

(d) The waiting period does not apply to an action involving a financial interest of this state. No local consent is required when a condition in Subsection (b) is satisfied. The same loss may be recovered only once.

Sec. 140C.102. LOCAL AUTHORITY AND COORDINATION. (a) A local prosecuting authority may investigate and bring an action in its entity's name to recover its losses. On filing, it shall serve the complaint on the attorney general and other affected entities, subject to Section 140C.103.

(b) The attorney general may intervene within 60 days after receipt and later for good cause. Assumption of primary responsibility in a wholly local case requires Section 140C.101(b). The local authority remains entitled to participate, subject to court orders, and may not release a claim of this state or another entity.

(c) An affected local entity may intervene in a state action within 60 days after receiving the complaint and later for good cause. Local and state actions concerning the same essential facts shall be coordinated or consolidated to the extent permitted by court rules. There may be only one recovery for the same loss.

Sec. 140C.103. NOTICE AND CONFLICTS. (a) The attorney general shall notify the legal representative of an affected local entity of a state action when filed and of a relator action not later than 15 days after receiving the complaint and disclosure. The notice must include those documents and require confidentiality. Delayed governmental forwarding may not extend the relator's seal or election period without a court order.

(b) On specific facts showing that notice would materially jeopardize investigation, evidence, confidentiality, or protection against retaliation, the court may delay or limit notice, identify a nonconflicted recipient, or temporarily authorize withholding. Each withholding period may not exceed 60 days and may be renewed only on a current showing of need. The court shall address any resulting election period under Section 140C.152 without creating an indefinite bar to the relator proceeding.

(c) An attorney or official with a financial, personal, or professional conflict materially impairing independent representation shall recuse consistently with applicable law and professional rules. A local entity may designate a nonconflicted attorney. If it does not do so within 30 days after notice of the conflict, the attorney general may seek a finding under Section 140C.101(b)(3). A conflicted representative may not veto enforcement or disposition. Disagreement alone is not a conflict.

(d) An affected entity shall have notice and an opportunity to be heard before disposition. This section does not require service on a defendant before authorized by the court. Disqualification of a governmental attorney and substitution within a governmental office are governed by otherwise applicable law; this chapter does not authorize appointment of a replacement attorney general.

Sec. 140C.104. CIVIL INVESTIGATIVE DEMANDS. (a) Before bringing an action or deciding whether to intervene, the attorney general may issue a written demand for relevant documents, written answers, or sworn testimony on reasonable grounds to believe a violation occurred. The demand must identify the suspected conduct, describe the material with reasonable specificity, designate the recipient and manner of response, and allow at least 20 days to respond.

(b) A demand may not require production of privileged material or impose an unreasonable burden. A recipient may obtain counsel and, before the response deadline, petition the district court in the recipient's county or Travis County to modify or set aside the demand. Timely filing stays the disputed portion until the court rules. The attorney general may seek enforcement in that court; no penalty for noncompliance may be imposed without a court order and opportunity to comply.

(c) The attorney general shall designate a custodian and protect personal information, privileged material, and trade secrets. Materials obtained through a demand and nonpublic investigative work product are confidential while the investigation or related litigation is active. The attorney general may disclose them to authorized government investigators or attorneys and, under a court order and appropriate protections, to a relator or other person assisting the investigation. Confidentiality under this subsection is subject to constitutional disclosure requirements and does not excuse discovery required in the action.

(d) A local prosecuting authority may request the attorney general's assistance or use investigative authority otherwise provided by law.

SUBCHAPTER D. ACTIONS BY PRIVATE PERSONS

Sec. 140C.151. QUI TAM ACTION. (a) A person may bring a civil action for a violation of this chapter in the name of this state and each affected governmental entity, for those entities and the person. To that extent, this chapter assigns to the relator a conditional partial interest in the statutory financial claim of this state and the claim of each affected governmental entity, subject to governmental supervision and disposition under this chapter.

(b) The relator must be represented by an attorney licensed or otherwise authorized to practice in the court. A relator need not be an employee or a taxpayer of the affected entity and need not show a personal financial injury distinct from the assigned interest.

(c) The relator shall file the complaint in camera and under seal and contemporaneously serve the attorney general with the complaint and a written disclosure of substantially all material evidence and information possessed. The defendant may not be served until the court orders. The relator may not publicly disclose sealed filings or their contents except as authorized by the court.

(d) The seal shall remain for at least 60 days after the attorney general receives both the complaint and disclosure. The attorney general or a nonconflicted local prosecuting authority may request an extension for good cause supported by an in camera showing. Extensions must be limited to the time reasonably necessary, with a status report at least every 90 days.

Sec. 140C.152. ELECTION AND PRIVATE PROSECUTION. (a) Not later than 60 days after the attorney general receives both the complaint and evidence disclosure, a governmental attorney shall notify the court whether the attorney will conduct the action. A local election is limited to that entity's financial interest. The attorney general may elect to conduct a wholly local action if Section 140C.101(b) is satisfied, including a local declination during that period. The court may extend the seal and election period on a particular showing of good cause for a specified period.

(b) On declination by the eligible governmental attorneys or expiration of the election period without intervention, the relator may conduct the action. The court shall order unsealing and authorized service within the time prescribed by the Texas Rules of Civil Procedure. Local notice does not restart the common election period; Section 140C.103(b) governs a necessary extension.

(c) An eligible governmental attorney may intervene later for good cause. State assumption of primary responsibility in a wholly local case remains subject to Section 140C.101(b). The court shall account for the timing and extent of governmental participation under Section 140C.201.

Sec. 140C.153. CONDUCT AND JUDICIAL CONTROL. (a) An intervening governmental attorney has primary responsibility for prosecution; the relator remains a party. If more than one intervenes, the attorney

general may lead subject to Section 140C.101(b). Otherwise the court shall designate a lead attorney after consultation with affected entities.

(b) If no governmental attorney conducts the action, the relator shall conduct it and provide the attorney general and affected entities with filed pleadings and dispositive orders. Governmental attorneys may obtain transcripts at their own expense.

(c) A relator or local entity may not dismiss, settle, waive, or release a claim under this chapter without court approval after notice to the attorney general, affected entities, and relator. Each has 30 days after notice to submit an objection unless the court extends that period for good cause. An objecting governmental attorney must identify the financial interest, inadequacy, conflict, or other particular public-interest ground. The court shall approve a proposed settlement only if fair, adequate, reasonable, consistent with Section 140C.204, and free from collusion; it shall approve a dismissal only if consistent with the public financial interest and rights preserved by this chapter. Attorney general consent is not a prerequisite. A routine contract release does not extinguish an accrued chapter claim without this procedure.

(d) After intervening, including for disposition, an eligible governmental attorney may seek dismissal over a relator's objection. After notice and a hearing, the court shall approve dismissal if it has a rational relationship to a legitimate governmental purpose and is not fraudulent, arbitrary, or contrary to law. The motion must state its public reasons. A local attorney may seek disposition only of its entity's interest.

(e) An eligible intervening governmental attorney may settle over objection after notice and a hearing if the court finds the settlement fair, adequate, and reasonable and satisfies Subsection (c). A representative with a disqualifying conflict may not control disposition. Governmental declination or nonresponse does not waive a relator's earned share.

(f) For good cause the court may limit duplicative, irrelevant, harassing, or unduly burdensome participation. On a specific showing that discovery would interfere with a diligently pursued related investigation, the court may stay affected discovery for up to 60 days, renewable on a current showing. Confidentiality protections may not deny a party a meaningful opportunity to be heard.

Sec. 140C.154. RELATED AND PREVIOUS GOVERNMENT ACTIONS. (a) While an action under Subchapter D is pending, a person other than a governmental attorney may not intervene or bring a related action based on the same essential facts. This provision does not bar a retaliation action or an unrelated claim.

(b) A relator may not bring an action based on substantially the same allegations or transactions already being pursued in a civil action or civil monetary penalty proceeding in which an affected governmental entity is a party. An action finally resolved by a binding judgment or settlement approved under Section 140C.153 may not be relitigated under this chapter to the extent of that resolution.

(c) A governmental entity's prior receipt of a complaint, audit, or public-information request, or a decision not to investigate, does not alone constitute a proceeding or settlement under this section.

Sec. 140C.155. PUBLIC DISCLOSURE AND ORIGINAL SOURCES. (a) The court shall dismiss an affected claim in a relator action if substantially the same allegations or transactions were publicly disclosed in:

- (1) a criminal, civil, or administrative hearing in which this state, an affected local entity, or its agent is a party;
- (2) a federal, state, or local legislative or governmental report, hearing, audit, or investigation made on the public record or disseminated broadly to the public; or
- (3) the news media.

(b) Dismissal is not required if the attorney general opposes it or the relator is an original source. An original source is a person that voluntarily provided the underlying information to the attorney general or a nonconflicted local prosecuting authority before public disclosure, or possesses information independent of and materially adding to publicly disclosed allegations or transactions and voluntarily provided that

information to the attorney general before filing. For an entity relator, qualifying information must have been developed by officers, employees, or agents acting on its behalf and included in its submission.

(c) Receipt, release, or availability of records under Chapter 552, Government Code, the federal Freedom of Information Act, or another public-records law does not by itself constitute public disclosure under Subsection (a). A person is not disqualified solely because the person used those records. Independent analysis materially identifying previously undisclosed false billing, payment misrepresentations, or prohibited allocation may satisfy Subsection (b); merely repackaging already disclosed allegations does not.

(d) A relator's own first public disclosure, including disclosure by its officers, employees, or agents acting on its behalf, does not bar that relator. This exception does not remove a bar arising from substantially the same allegations or transactions independently made public earlier by another source, or excuse a breach of a seal, confidentiality duty, or other applicable law.

(e) A record separately disclosed through a source in Subsection (a) remains subject to that subsection and its exceptions. The plaintiff must plead and prove the violation and damages. The bar is not jurisdictional and does not limit a governmental action.

Sec. 140C.156. RELATORS WITH OFFICIAL ENFORCEMENT DUTIES. (a) A current or former governmental officer or employee relying substantially on information obtained through official auditing, contract administration, investigation, or enforcement duties must provide the information to the attorney general and, unless a demonstrated conflict or retaliation risk makes it impracticable, the entity's nonconflicted supervisory or legal authority at least 90 days before filing a relator action.

(b) The court may shorten that period on specific facts showing concealment by responsible officials, substantial retaliation risk, imminent expiration of limitations, or imminent loss of evidence or recoverable assets. The period does not extend limitations. Section 140C.154 applies to a governmental proceeding begun during the period.

(c) This section does not disqualify a person solely because of public employment or use of public records available independently of official duties. It does not authorize disclosure of privileged or independently confidential information or excuse a breach of an applicable duty. A retaliation action does not require compliance with this section.

SUBCHAPTER E. AWARDS, FEES, AND DISTRIBUTION OF PROCEEDS

Sec. 140C.201. RELATOR SHARE. (a) Subject to Section 140C.202, a successful relator shall receive:

(1) at least 15 percent and not more than 25 percent of the distributable proceeds if a governmental attorney intervenes and conducts the action; or

(2) at least 25 percent and not more than 30 percent if no governmental attorney intervenes and conducts the action.

(b) The court shall determine the percentage based on the relator's contribution, the significance of the information, and the work and risk undertaken. Intervention solely to approve or seek disposition or to monitor the action does not reduce the share under Subsection (a)(2). If intervention occurs after substantial prosecution by the relator, the court shall consider that work in determining the award within the applicable range.

(c) The percentages apply collectively to all relators entitled to an award on the same recovery. The court shall allocate the award among them. A settlement may not extinguish an otherwise payable relator award without the relator's agreement or a court determination under this subchapter.

Sec. 140C.202. CULPABLE RELATORS. (a) If a relator planned or initiated the violation, the court may reduce the relator's share, including to zero, taking into account culpability, efforts to stop the violation, and contribution to recovery. The court shall state its reasons.

(b) A relator convicted of criminal conduct arising from participation in the violation shall be dismissed as a relator and receive no share. The court shall preserve prosecution by a governmental attorney or an eligible remaining relator and may allow a reasonable period for governmental intervention. This section does not give a relator immunity from liability.

Sec. 140C.203. FEES AND COSTS. (a) A relator that obtains a recovery by judgment or approved settlement shall also be awarded reasonable attorney's fees, necessary expenses, and costs against the liable defendant, separately from the proceeds used to calculate the relator share. An affected governmental entity that prevails shall be awarded reasonable investigation and litigation expenses, attorney's fees, and costs against the defendant.

(b) If no governmental attorney conducts the action and the defendant prevails, the court may award reasonable attorney's fees and expenses against the relator only on a finding that the claim was clearly frivolous, clearly vexatious, or primarily brought to harass. Governmental declination or failure to prevail does not by itself support that finding.

(c) Chapters 9 and 10 of this code and applicable court rules governing sanctions remain applicable. A governmental entity is not liable under this chapter for the relator's fees, expenses, or a defendant's expenses solely because an action was brought in its name. This subsection does not alter liability imposed by an independent, otherwise applicable law.

Sec. 140C.204. ALLOCATION AND DISTRIBUTION. (a) The court shall identify governmental financial interests, actual losses, controlling fund restrictions, and the allocation of recovery. No allocation may release a claim of the United States or another government not represented under this chapter. Restricted federal amounts excluded by Section 140C.002(4) shall be reserved before distribution.

(b) Distributable proceeds shall be distributed in the following order:

(1) the relator award, if any;

(2) restoration of affected entities' actual uncompensated losses, in proportion to those losses if the balance is insufficient; and

(3) the remaining balance, allocated among affected entities in proportion to their losses or, if none is measurable, their financial interests.

(c) All amounts allocated to a local entity remain payable to that entity; no percentage is transferred to the state solely because enforcement was state-led. State loss restoration returns to the fund sustaining the loss. The state's residual allocation under Subsection (b)(3) is deposited to the account under Section 140C.205.

(d) An entity receives its allocation regardless of participation or conflict. Restrictions on use or return of grant funds control over inconsistent distributions. The court shall identify amounts unavailable for unrestricted distribution and calculate the share only on the legally distributable balance.

(e) Distributions shall be made within 60 days after collection, subject to a stay, allocation dispute, or controlling restriction. Installments shall be distributed under the approved allocation. Separately recovered governmental fees and costs reimburse the office incurring them, subject to applicable fiscal law.

Sec. 140C.205. ENFORCEMENT ACCOUNT AND REPORT. (a) The false claims enforcement account is a dedicated account in the general revenue fund. Money may be appropriated only to the attorney general for administration, investigation, and enforcement of this chapter and assistance to nonconflicted local authorities. The account does not receive a mandatory percentage of local recoveries.

(b) Not later than December 1 of each year, the attorney general shall publish a report for the preceding state fiscal year stating filings, interventions, dismissals, resolutions, amounts awarded and collected, relator payments, funds restored by governmental entity and county where practicable, account receipts, appropriations, expenditures, and time to resolution. It must separately identify Chapter 36, Human Resources

Code, federal, and new-chapter recoveries and distinguish judgments from cash collected. Confidential or sealed information may not be disclosed.

SUBCHAPTER F. RETALIATION

Sec. 140C.251. RETALIATION BY PRIVATE PERSONS. (a) An employee, contractor, or agent may bring an action against a person that discharges, demotes, suspends, threatens, harasses, or otherwise discriminates in the employment or contractual relationship because of lawful efforts by that individual or persons associated with the individual to investigate, report, assist an action concerning, or stop a reasonably suspected violation of this chapter.

(b) Lawful internal reporting is protected. A filed or successful false claims action is not required. Relief includes reinstatement with equivalent seniority, two times lost back pay, interest, special damages, reasonable attorney's fees, expenses, and costs, and necessary injunctive relief. A contractor or agent may receive restoration of the relationship or equivalent compensation appropriate to that relationship.

(c) The action must be brought not later than three years after retaliation. Sections 140C.154 and 140C.155 and the mandatory relator seal do not apply. Section 140C.005 applies; public-employer liability is governed solely by Section 140C.252.

Sec. 140C.252. RETALIATION BY GOVERNMENTAL EMPLOYERS. (a) A governmental entity may not retaliate against its employee because of lawful efforts to investigate, report internally or to an appropriate governmental authority, assist an action concerning, or stop a reasonably suspected violation of this chapter. The protection applies when the suspected violation is by a private contractor or recipient and does not depend on the recipient being an employee of the entity.

(b) An affected employee may sue the employing governmental entity. Sovereign and governmental immunity from suit and liability are expressly waived solely for that action and the relief authorized by this section. No recovery against an individual official in an official or individual capacity is authorized by this section.

(c) Relief is limited to reinstatement with equivalent seniority, actual lost back pay and interest, actual special damages caused by the retaliation, reasonable attorney's fees, expenses, and costs, and necessary injunctive relief. Exemplary damages and a multiplier of back pay are not authorized.

(d) The action must be brought not later than three years after retaliation. It does not require a relator action, a government enforcement decision, or exhaustion of the grievance procedure under Chapter 554, Government Code. Chapter 554 and other existing remedies remain available under their own requirements. Duplicate compensation is prohibited. Sections 140C.154 and 140C.155 and the mandatory relator seal do not apply.

Sec. 140C.253. PROTECTED REPORTING RIGHTS. A predispute agreement may not prohibit lawful reporting protected by this subchapter or waive its substantive protections. Arbitration and other procedures remain subject to otherwise applicable state and federal law. This section does not authorize unlawful acquisition or disclosure of records.

SUBCHAPTER G. PROCEDURES, LIMITATIONS, AND MISCELLANEOUS PROVISIONS

Sec. 140C.301. COURT AND VENUE. An action under this chapter may be brought in a court with jurisdiction under otherwise applicable law, in a county in which a defendant resides, a substantial part of the alleged violation occurred, or an affected governmental entity has its principal office. State participation alone does not create Travis County venue. Venue for retaliation is governed by generally applicable law. Otherwise applicable jurisdiction, service, appellate jurisdiction, and business-court requirements are preserved.

Sec. 140C.302. LIMITATIONS. (a) An action under Subchapter C or D must be brought not later than the later of:

(1) six years after the violation; or

(2) three years after facts material to the action were known or reasonably should have been known by a responsible official.

(b) An action may not be brought more than 10 years after the violation. This limitation applies regardless of governmental intervention. A relator is not a responsible official merely by bringing the action.

(c) A governmental pleading on intervention relates back to the relator's filing to the extent it concerns conduct, transactions, or occurrences described or attempted to be described in that complaint.

Sec. 140C.303. PLEADING, PROOF, AND JUDGMENT. (a) For fraud-based liability, the plaintiff must plead with particularity the conduct, basis for falsity, governmental financial interest, and facts supporting knowledge and materiality. For Section 140C.051(9), the pleading must identify the award representation, contemporaneous basis for falsity or lack of intent, reliance, and resulting claim. For Section 140C.051(8), the plaintiff must instead plead the commitment, material failure, deadline, disclosure and repayment periods, financial interest, unearned amount, and facts supporting actual knowledge. A request for enhanced remedies must identify the additional conduct under Section 140C.053(g). Knowledge may be alleged generally if supported by factual allegations. The Texas Rules of Civil Procedure otherwise apply.

(b) The plaintiff must prove liability, damages, and entitlement to an award by a preponderance of the evidence. A final criminal judgment has the preclusive effect provided by applicable law. Trial by jury is preserved on issues for which that right exists.

Sec. 140C.304. CONFIDENTIALITY AND COURT RECORDS. (a) A complaint under seal, the relator's evidence disclosure, and copies held by a governmental entity are confidential and excepted from required disclosure under Chapter 552, Government Code, while the seal is in effect. A governmental recipient shall comply with the seal. Section 140C.104 governs investigative demand materials.

(b) Independently existing procurement, payment, performance, and audit records do not become confidential solely because they are used in an action or supplied with a disclosure. A final unsealed judgment or settlement is public except for particular information independently protected by law or court order. This section creates no blanket exception for records about a contractor.

Sec. 140C.305. COORDINATION AND ALTERNATIVE REMEDIES. (a) The attorney general may coordinate with federal, state, and local authorities. A plaintiff shall identify known related recoveries to the court. The same actual loss may not be recovered more than once. The court shall credit compensatory amounts collected for that loss and distinguish them from separate penalties and amounts belonging to another government.

(b) If, after filing of a relator action, a governmental entity elects an alternative civil or administrative remedy for the same violation, the relator retains the right to an award and fees on the legally distributable recovery to the same extent as if the action continued. This subsection does not give a relator a right to criminal fines, forfeitures, or funds that federal law excludes from distribution.

(c) This chapter does not create authority to recover a purely federal financial interest that no governmental entity described by Section 140C.002 administers or is obligated to safeguard or repay. It does not limit an action under federal law or permit a release of a federal claim without federal authorization. The court shall prevent duplicate recovery and duplicate relator awards on the same recovery.

Sec. 140C.306. RULES AND SEVERABILITY. (a) The attorney general may adopt rules for secure receipt of disclosures, intergovernmental coordination, reporting, and administration of Section 140C.205. A rule may not change liability, penalty amounts, or a relator's statutory right to proceed or add a local-consent requirement to Section 140C.101.

(b) If a provision or application is held invalid, remaining provisions and applications remain effective to the extent they can operate independently. If private prosecution is held invalid, governmental enforcement is preserved.

Sec. 140C.307. CHAPTER 27 EXEMPTION. Chapter 27 does not apply to a civil action brought under this chapter, including a relator or retaliation action.

SECTION 2. (a) Except as provided by Subsection (b) of this section, Chapter 140C, Civil Practice and Remedies Code, as added by this Act, applies only to conduct occurring on or after September 1, 2027. It does not revive a barred claim or impose liability for a pre-effective-date claim, representation, or retention solely because its consequences continue. An independently actionable false claim, false statement, or improper avoidance of an independently existing obligation occurring on or after that date remains subject to the chapter.

(b) Sections 140C.007, 140C.051(8), and 140C.053 of that code apply only to an agreement entered into or renewed on or after September 1, 2027, and to future performance and payment under that agreement. For a preexisting agreement materially amended on or after that date, those sections apply only to new performance commitments and additional consideration expressly undertaken by that amendment for future performance. A routine administrative amendment does not subject earlier commitments or payments to the new duty. A renewal does not revive liability for a prior performance period.

(c) Subchapter F applies only to retaliation occurring on or after September 1, 2027. Existing law governs earlier conduct.

SECTION 3. The attorney general shall adopt initial administrative rules necessary to implement Chapter 140C, Civil Practice and Remedies Code, as added by this Act, not later than January 1, 2028. Failure to adopt a rule does not postpone a right or remedy expressly provided by that chapter.

SECTION 4. This Act takes effect September 1, 2027.