A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTING THE “LIABILITY FOR INJURIES CAUSED BY ABORTION‑INDUCING DRUGS ACT” BY ADDING ARTICLE 7 TO CHAPTER 41, TITLE 44 SO AS TO IMPOSE LIABILITY ON ANY PERSON WHO MANUFACTURES, MAILS, DISTRIBUTES, TRANSPORTS, DELIVERS, OR PROVIDES ABORTION‑INDUCING DRUGS, OR WHO AIDS OR ABETS THE MANUFACTURE, MAILING, DISTRIBUTION, TRANSPORTATION, DELIVERY, OR PROVISION OF ABORTION‑INDUCING DRUGS FOR CERTAIN DAMAGES, WITH EXCEPTIONS; TO DEFINE TERMS; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 41, Title 44 of the S.C. Code is amended by adding:

Article 7

Liability for Injuries Caused by Abortion‑Inducing Drugs

Section 44‑41‑750. As used in this article:

(1) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

(2) “Abortion‑inducing drugs” includes any drug, medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, that is prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman’s unborn child. The term includes off‑label use of drugs, medicines, or other substances known to have abortion‑inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the mifeprex regimen, mifepristone, misoprostol (Cytotec), and methotrexate. The term does not include:

(a) Plan B, morning‑after pills, intrauterine devices, or any other type of contraception or emergency contraception;

(b) a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered solely for reasons that do not include abortion, such as misoprostol that is prescribed, dispensed, or administered for the purpose of treating stomach ulcers; or

(c) a drug, medicine, or other substance that is prescribed by a licensed physician to perform or induce an abortion in response to a medical emergency.

(3) “Abortion fund” means a person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity that exists for the purpose of aiding or abetting elective abortions, and that pays for, reimburses, or subsidizes in any way the costs associated with obtaining an elective abortion.

(4) “Abortion provider” means a person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity that performs elective abortions.

(5) “Affiliate” means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(a) common ownership, management, or control between the parties to the relationship;

(b) a franchise granted by the person or entity to the affiliate; or

(c) the granting or extension of a license or other agreement authorizing the affiliate to use the other person’s or entity’s brand name, trademark, service mark, or other registered identification mark.

(6) “Elective abortion” means any abortion other than those performed or induced in response to a medical emergency by a licensed physician.

(7) “Fertilization” means the fusion of a human spermatozoon with a human ovum.

(8) “Governmental entity” means this State, a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this State.

(9) “Human being” means an individual member of the species Homo sapiens at any stage of development beginning at fertilization.

(10) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(11) “Medical emergency” means in reasonable medical judgment, a condition exists that has complicated the pregnant woman’s medical condition and necessitates an abortion to prevent death or serious risk of a substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. A condition must not be considered a medical emergency if based on a claim or diagnosis that a woman will engage in conduct that she intends to result in her death or in a substantial and irreversible physical impairment of a major bodily function.

(12) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(13) “Unborn child” means an individual organism of the species Homo sapiens in any stage of gestation from fertilization until live birth.

(14) “Woman” and “women” include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

Section 44‑41‑755. This article may not be construed to impose liability on the speech or conduct of:

(1) an internet service provider or the provider’s affiliates or subsidiaries;

(2) a search engine; or

(3) a cloud service provider that solely provides access or connection to or from an internet website or other information or content on the internet or on a facility, system, or network that is not under the provider’s control, including transmission, downloading, intermediate storage, access software, or other services.

Section 44‑41‑760. (A) Notwithstanding any other provision of law and except as provided by this article, any person who manufactures, mails, distributes, transports, delivers, or provides abortion‑inducing drugs, or who aids or abets the manufacture, mailing, distribution, transportation, delivery, or provision of abortion‑inducing drugs, shall be strictly, absolutely, and jointly and severally liable for:

(1) the wrongful death of an unborn child or pregnant woman who dies from the use of abortion‑inducing drugs; and

(2) any personal injuries suffered by any unborn child or pregnant woman from the use of abortion‑inducing drugs.

(B) Notwithstanding subsection (A), no lawsuit may be brought pursuant to this section against a provider or user of an interactive computer service if the lawsuit would be preempted by 47 U.S.C. Section 230(c).

(C) Notwithstanding any other provision of law, a person who engages in the conduct described in subsection (A) is liable if his conduct contributes in any way to the death or personal injuries suffered by an unborn child or a pregnant woman, regardless of whether the person’s conduct was a but‑for or proximate cause of the death or injury.

(D) Notwithstanding any other provision of law, a wrongful‑death claim under this section may be brought by the mother or the father of an unborn child who dies from the use of abortion‑inducing drugs, regardless of whether the other parent decides to sue. The biological father of an unborn child who dies from the use of abortion‑inducing drugs may sue for wrongful death regardless of whether he was married to the unborn child’s mother at the time of the unborn child’s conception or death.

(E) It is an affirmative defense if a defendant sued pursuant to this section:

(1) was unaware that it was engaged in the conduct described in subsection (A); and

(2) took every reasonable precaution to ensure that it would not manufacture, mail, distribute, transport, deliver, provide, or aid or abet the manufacture, mailing, distribution, transportation, delivery, or provision of abortion‑inducing drugs.

The defendant has the burden of proving an affirmative defense pursuant to this subsection by a preponderance of the evidence.

(F) Notwithstanding any other provision of law, if a plaintiff who brings suit pursuant to this section is unable to identify the specific manufacturer of the drug that caused the death or injury, then liability shall be apportioned among all manufacturers of abortion‑inducing drugs in proportion to each manufacturer’s share of the national market for abortion‑inducing drugs at the time the death or injury occurred. A manufacturer is not subject to liability pursuant to this section if it manufactures abortion‑inducing drugs solely for purposes that do not include performing, inducing, attempting, or assisting an elective abortion.

(G) Notwithstanding any other provision of law, a person may bring an action pursuant to this section not later than the thirtieth anniversary of the date the cause of action accrues.

(H) Notwithstanding any other provision of law, the following are not a defense to an action brought pursuant to this section:

(1) ignorance or mistake of law;

(2) a defendant’s belief that the requirements or provisions of this article are unconstitutional or were unconstitutional;

(3) a defendant’s reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

(4) a defendant’s reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) a defendant’s reliance on any federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

(6) the laws of another state or jurisdiction, including an abortion shield law, unless the South Carolina Constitution or federal law compels the court to enforce that law;

(7) non‑mutual issue preclusion or non‑mutual claim preclusion;

(8) the consent of the plaintiff or the unborn child’s mother to the abortion, or the consent of one or both of the parents of the unborn child’s mother to the abortion, or the consent of the legal guardian of the unborn child’s mother to the abortion;

(9) contributory or comparative negligence;

(10) assumption of risk;

(11) lack of but‑for or proximate causation;

(12) sovereign immunity, governmental immunity, or official immunity, or

(13) any claim that the enforcement of this article or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 44‑41‑765.

(I) Notwithstanding any other provision of law, any waiver or purported waiver of the right to sue pursuant to this section shall be void as against public policy, and shall not be enforceable in any court.

(J) Notwithstanding any other provision of law, this section does not impose liability for:

(1) death or personal injuries resulting from an abortion performed or induced by a licensed physician in response to a medical emergency;

(2) speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the Supreme Court of the United States’ interpretations of the Fourteenth Amendment of the United States Constitution, or by Section 2, Article 1 of the South Carolina Constitution;

(3) conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;

(4) the provision of basic public services, including fire and police protection and utilities, by a governmental entity or a common carrier to an abortion provider, an abortion fund, an affiliate of an abortion provider or abortion fund, or a manufacturer or distributor or abortion‑inducing drugs, in the same manner as the governmental entity or common carrier provides those services to the general public;

(5) the possession, distribution, mailing, transport, delivery or provision of an abortion‑inducing drug for the purpose of enabling a licensed physician to treat a pregnant woman during a medical emergency; or

(6) conduct taken at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that conduct would violate the doctrines of preemption or intergovernmental immunity.

(K) Notwithstanding any other provision of law, a civil action pursuant to this section may not be brought:

(1) against the woman who used or sought to obtain abortion‑inducing drugs to abort or attempt to abort her unborn child;

(2) against any person that acted at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if the imposition of liability would violate the doctrines of preemption or intergovernmental immunity;

(3) by any person who impregnated the woman who used abortion‑inducing drugs through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person;

(4) against a physician, hospital, or a healthcare professional working at a hospital, whose distribution, prescription, provision, possession, and facilitation of abortion‑inducing drugs was done solely for purposes that do not include performing, inducing, attempting, or assisting an elective abortion, such as treating a medical emergency, removing an ectopic pregnancy, or causing the expulsion of the contents of the uterus following a spontaneous miscarriage;

(5) against a common carrier, a pharmaceutical manufacturer, a pharmaceutical distributor, or a pharmacy located in this State and licensed by the South Carolina Board of Pharmacy, whose manufacture, distribution, mailing, transportation, delivery, prescription, provision, and possession of abortion‑inducing drugs was done solely for purposes that do not include performing, inducing, attempting, or assisting an elective abortion, such as treating a medical emergency, removing an ectopic pregnancy, or causing the expulsion of the contents of the uterus following a spontaneous miscarriage, and that took every reasonable precaution to ensure that it would not manufacture, distribute, mail, transport, deliver, prescribe, provide, possess, or aid or abet the manufacture, distribution, mailing, transportation, delivery, prescription, provision, or possession of abortion‑inducing drugs for the purpose of performing, inducing, attempting, or assisting an elective abortion, including by adopting a policy that it will not manufacture, distribute, mail, transport, deliver, prescribe, provide, possess, or aid or abet the manufacture, distribution, mailing, transportation, delivery, prescription, provision, or possession of abortion‑inducing drugs for this purpose.

(L) Notwithstanding any other provision of law, including Chapter 2, Title 36, the courts of this State shall have personal jurisdiction over any defendant sued pursuant to this section to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution, and service may be made outside the State.

(M) Notwithstanding any other provision of law, the law of South Carolina shall apply to any abortion performed, induced, or attempted by or upon a resident or citizen of South Carolina, regardless of where that abortion or attempted abortion occurs, and to any civil action brought pursuant to this section, to the maximum extent permitted by federal law and the Constitution of South Carolina. Notwithstanding any other provision of law, any contractual choice‑of‑law provision that requires or purports to require application of the laws of a different jurisdiction shall be void as against public policy, and shall not be enforceable in any court.

(N) Notwithstanding any other provision of law, a civil action pursuant to this section shall not be subject to any provision of Chapter 32, Title 1.

(O) Notwithstanding any other provision of law, including Rule 23 of the South Carolina Rules of Civil Procedure, a civil action pursuant to this section may not be litigated on behalf of a plaintiff class or a defendant class, and no court may certify a class under Rule 23 of the South Carolina Rules of Civil Procedure in any civil action brought pursuant to this section.

Section 44‑41‑765. (A) A defendant against whom an action is brought pursuant to Section 44‑41‑760 may assert an affirmative defense to liability pursuant to this section if:

(1) the imposition of civil liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(2) the defendant:

(a) has standing to assert the rights of a third party under the tests for third‑party standing established by the Supreme Court of the United States; and

(b) demonstrates that the imposition of civil liability on the defendant will violate constitutional or federally protected rights belonging to that third party; or

(3) the imposition of civil liability on the defendant will violate the South Carolina Constitution, as interpreted by the Supreme Court of South Carolina.

The defendant shall bear the burden of proving the affirmative defense in subsection (A) by a preponderance of the evidence.

(B) Nothing in this section or article shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of South Carolina law as a defense to liability pursuant to Section 44‑41‑760, or from asserting any other defense that might be available under any other source of law.

(C) Notwithstanding any other provision of law, no court may apply the law of another state or jurisdiction to any civil action brought pursuant to Section 44‑41‑760, unless federal law or the Constitution of South Carolina compels it to do so. Notwithstanding any other provision of law, any contractual choice‑of‑law provision that requires or purports to require application of the laws of a different jurisdiction shall be void as against public policy, and shall not be enforceable in any court.

Section 44‑41‑770. (A) Notwithstanding any other provision of law, including Chapter 7, Title 15, a civil action brought pursuant to Section 44‑41‑760 may be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this State of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this State.

(B) If a civil action is brought pursuant to Section 44‑41‑760 in any one of the venues described by subsection (A), then the action may not be transferred to a different venue without the written consent of all parties.

(C) Any contractual choice‑of‑forum provision that purports to require a civil action brought pursuant to Section 44‑41‑760 to be litigated in a particular forum shall be void as against public policy, and may not be enforced in any state or federal court.

Section 44‑41‑775. Notwithstanding any other law, the requirements of this article shall be enforced exclusively through the private civil actions described in Section 44‑41‑760. No direct or indirect enforcement of this article may be taken or threatened by the State, a political subdivision, a district or county attorney, or any officer or employee of this State or a political subdivision against any person or entity, by any means whatsoever, and no violation of this article may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except through the private civil actions described in Section 44‑41‑760. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this article.

Section 44‑41‑780. (A) Notwithstanding any other provision of law, this State, a political subdivision of this State, or an officer or employee of this State or a political subdivision of this State may not:

(1) act in concert or participation with a claimant bringing an action pursuant to Section 44‑41‑760;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a claimant bringing an action pursuant to Section 44‑41‑760;

(3) attempt to control or influence a person’s decision to bring an action pursuant to Section 44‑41‑760 or that person’s conduct of the litigation; or

(4) intervene in an action brought pursuant to Section 44‑41‑760.

(B) This section does not prohibit this State, a political subdivision of this State, or an officer or employee of this State or a political subdivision of this State from filing an amicus curiae brief in an action brought pursuant to Section 44‑41‑760 if this State, the political subdivision, the officer, or the employee does not act in concert or participation with the claimant who brings the action.

Section 44‑41‑785. If an action is brought against a person or a judgment is entered against a person based wholly or partly on the person’s decision to bring or threaten to bring an action pursuant to Section 44‑41‑760, the person may recover damages from the claimant who brought the action or obtained the judgment or who has sought to enforce the judgment. The damages must include:

(1) compensatory damages created by the action or judgment, including money damages in an amount of the judgment and costs, expenses, and reasonable attorney’s fees spent in defending the action;

(2) costs, expenses, and reasonable attorney’s fees incurred in bringing an action pursuant to this section; and

(3) additional statutory damages in an amount of not less than one hundred thousand dollars.

Section 44‑41‑790. (A) Notwithstanding any other provision of law, a person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent a person, including this State, a political subdivision of this State, or an officer, employee, or agent of this State or a political subdivision of this State, from enforcing or bringing an action to enforce a law, including a statute, ordinance, rule, or regulation, that regulates or restricts abortion or that limits taxpayer funding for persons performing or promoting abortions in any state or federal court, or who represents a litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and reasonable attorney’s fees of the prevailing party in the action seeking declaratory or injunctive relief, including the costs and reasonable attorney’s fees the prevailing party incurs in its efforts to recover costs and fees.

(B) For purposes of this section, a party is considered a prevailing party if:

(1) a state or federal court dismisses a claim or cause of action brought against the party by a litigant that seeks the declaratory or injunctive relief described by subsection (A), regardless of the reason for the dismissal;

(2) a state or federal court enters judgment in the party’s favor on that claim or cause of action; or

(3) the litigant that seeks the declaratory or injunctive relief described by subsection (A) voluntarily dismisses or nonsuits its claims against the party under Rule 41, Federal Rules of Civil Procedure, Rule 41, South Carolina Rules of Civil Procedure, or any other procedural rule.

(C) A prevailing party may recover costs and reasonable attorney’s fees pursuant to this section only to the extent that those costs and attorney’s fees were incurred while defending claims or causes of action on which the party prevailed.

(D) Regardless of whether a prevailing party sought to recover costs or attorney’s fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney’s fees against a person, including an entity, attorney, or law firm, who sought declaratory or injunctive relief described by subsection (A) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by subsection (B) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(E) It is not a defense to a civil action brought pursuant to subsection (D) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney’s fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrine of issue or claim preclusion.

(F) Notwithstanding any other provision of law, including Chapter 7, Title 15, a civil action brought pursuant to subsection (D) may be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence of a defendant at the time the cause of action accrued, if the defendant is an individual;

(3) the county of the principal office in this State of a defendant that is not an individual; or

(4) the county of residence of the claimant, if the claimant is an individual residing in this State.

(G) If a civil action is brought pursuant to subsection (D) in a venue described by subsection (F), the action may not be transferred to a different venue without the written consent of all parties.

(H) Notwithstanding any other provision of law, any contractual choice‑of‑forum provision that purports to require a civil action pursuant to subsection (D) be litigated in another forum is void based on this state’s public policy and is not enforceable in any state or federal court.

Section 44‑41‑795. (A) Notwithstanding any other provision of law, the State and each of its subdivisions, and each of their officers and employees shall have sovereign immunity, governmental immunity, and official immunity, as appropriate, in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity or enforceability of any provision or application of this article, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the State or its political subdivisions, or any of their officers, employees, or agents, from enforcing any provision or application of this article, or from hearing, adjudicating, or docketing a civil action brought pursuant to Section 44‑41‑760, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the State and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), and Alden v. Maine, 527 U.S. 706 (1999), which applies in both state and federal court, and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by Section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I, by Congress’s powers to raise and support Armies and to provide and maintain a Navy, or by any other ground that might be recognized by the Supreme Court of the United States.

(B) Notwithstanding any other provision of law, the immunities conferred by subsection (A) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(C) Notwithstanding any other provision of law to the contrary, no provision of state law may be construed to waive or abrogate an immunity described in subsection (A) unless it expressly waives or abrogates immunity with specific reference to this section.

(D) Notwithstanding any other provision of law to the contrary, no attorney representing the State, its political subdivisions, or any officer, employee, or agent of this State or a political subdivision is authorized or permitted to waive an immunity described in subsection (A) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(E) Notwithstanding any other provision of law, including Chapter 53, Title 15, no court of this State may award declaratory relief that would pronounce any provision or application of this article invalid or unconstitutional, or that would restrain or prevent the State, its political subdivisions, any officer, employee, or agent of this State or a political subdivision, or any person from implementing or enforcing any provision or application of this article, or from hearing, adjudicating, docketing, or filing a civil action brought pursuant to Section 44‑41‑760.

(F) Nothing in this section or article shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this article as a defense to any action, claim, or counterclaim brought against that litigant.

(G) Notwithstanding any other provision of law, including Rule 23 of the South Carolina Rules of Civil Procedure, no court may certify a plaintiff or defendant class with respect to any claim that seeks declaratory or injunctive relief, or any type of stay or writ, that would pronounce any provision or application of this article invalid or unconstitutional, or that would restrain or prevent the State, its political subdivisions, any officer, employee, or agent of this State or a political subdivision, or any person from enforcing any provision or application of this article, or from hearing, adjudicating, docketing, or filing a civil action brought pursuant to Section 44‑41‑760.

Section 44‑41‑800. (A) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the General Assembly that every provision, section, subsection, sentence, clause, phrase, or word in this article, and every application of the provisions in this article to every person, group of persons, or circumstances, are severable from each other.

(B) If any application of any provision in this article to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this article shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the General Assembly’s intent and priority that every single valid application of every statutory provision be allowed to stand alone.

(C) The General Assembly further declares that it would have enacted this article, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this article, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this article were to be declared invalid, preempted, or unconstitutional.

(D) If any provision of this article is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of subsections (A), (B), and (C).

(E) No court may decline to enforce the severability requirements of subsections (A), (B), (C), and (D) on the ground that severance would “rewrite” the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court’s decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the South Carolina Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(F) If any state or federal court disregards any of the severability requirements in subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this article facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the General Assembly had enacted a provision limited to the persons, group of persons, or circumstances for which the provision’s application will not violate federal law or the federal or state constitutions, and every court and every state official shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION 2. This act takes effect upon approval by the Governor.

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