



EVERY MOTHER MATTERS ACT



HUMAN
COALITION
ACTION

EMMA BACKGROUND

Every Mother Matters Act

PROBLEM:

Seventy-five percent of women seeking an abortion would prefer to parent if their circumstances were different. Abortions are predominantly driven by socioeconomic concerns that preexist a pregnancy. Women equipped with support or resources often decide to keep their children. Communities already provide significant private and public resources to support their needs. And current informed consent requirements mandate abortion providers—who have a financial interest in terminating pregnancies—to give women written information about support programs in their community. Unfortunately, women continue to report unawareness that resources exist to help them and that obtaining support services can be difficult.

PURPOSE:

The Every Mother Matters Act (“EMMA”) remedies these issues by creating a system of tangible support for pregnant women in need—the Pregnancy Launch Program (“Program”). The Program offers and provides women with immediate personalized support, long-term solutions, and healthy pregnancy benefits through trained licensed professionals. EMMA ensures each woman seeking abortion receives a meaningful opportunity to learn about and access these Program services when she needs them most. The Program supports mothers and stabilizes families with the goal to empower them from support to independence.

RESULTS:

EMMA is estimated to reduce the demand for abortion by 30% by simply offering support for women seeking abortion. This projection is based on results from similar services provided across the country. EMMA also enables a host of benefits for family health and welfare. The bill provides access to prenatal and postpartum care, human trafficking and abuse assistance, and access to necessities such as employment, childcare, safe or affordable housing, and insurance or Medicaid. All Program care plans are individualized and include paths to independence.

FUNCTION:

The Department assigned creates a Pregnancy Launch Program to assist parents of children under two, including unborn, with health and socioeconomic needs. Before obtaining an abortion, a woman receives a free “resource access offer” from a trained, third-party professional. The professional explains public and private services available to the woman and offers to connect her directly with them. This offer is provided through a brief phone call to a toll-free phone number. If the woman accepts, EMMA supports extensive follow-up services for two years, regardless of her pregnancy outcome. EMMA gives a pregnant woman real options and better solutions for whatever she is facing.

CURRENT LAW:

The Women’s Right to Know Act (the “Act”), passed in most Republican-controlled states, recognizes the need to address the challenges pregnant women face to alleviate their demand for abortion.

The Act requires abortionists to give the pregnant woman a lengthy booklet that includes information about fetal development and a variety of programs with their



information. Further, abortion clinics providing the booklet possess a financial interest in the abortion occurring. They are not equipped to address women's socioeconomic needs and publicly object to doing so. Finally, women continue to report unawareness that resources exist to help them and that obtaining support services can also be cumbersome. EMMA builds on the foundation of the Act by providing women third-party, interpersonal, and comprehensive care.

CONSTITUTIONALITY:

Multiple state attorneys general offices and other key legal entities, including Human Coalition Action, reviewed EMMA and consider it constitutional and legally defensible. The bill only requires a brief phone call that immediately connects the pregnant woman with a resource assistance offer. She may choose to disclose no information at all. EMMA ensures the call can be accomplished within the state's current mandatory wait period. Finally, obtaining services or assistance is entirely voluntary.

KEY ASPECTS OF THE BILL:

- EMMA creates a Pregnancy Launch Program to provide 1) healthy pregnancy program; and 2) care plan coordination services and connect women in need with community resources.
 - Healthy pregnancy services include access to medical care, mental or behavioral health care, pregnancy support, and information on adoption.
 - Care plan coordination services are individualized care plans for Program Participants addressing socioeconomic needs such as safe housing, parenting classes, resources, employment, education, child care, adoption services, financial needs, addiction or substance abuse treatment, and assistance for abuse or human trafficking.
- Pregnancy Launch Program services are available to women seeking abortion, biological parents of unborn children, biological or adoptive parents of a child under two years, parents or guardians of minors with a child under two, and women who terminate their pregnancies.
- EMMA allows every woman seeking an abortion to receive a resource access offer by calling a toll-free number.
 - The resource access offer informs the pregnant woman of help available through the Pregnancy Launch Program.
 - The call allows for an opportunity to screen for human trafficking and abuse.
 - The call can be completed quickly, during a state's existing wait time.
 - The woman may participate in further support programs for two years if she chooses.
 - The woman may disclose only as much information as she chooses; her confidential information is legally protected.
- EMMA creates a process by which a physician must verify the resource access offer was given before performing an abortion.
- EMMA contains robust enforcement mechanisms for abortion providers.
- The bill contains reporting requirements about the types of services women need to support future policy development.

Learn More: HuCoAction.org



EMMA MODEL LEGISLATION

Draft Bill

Relating to support services for pregnancy, parenting, and adoption; to offer public and private resource assistance for women prior to abortion including abuse, assault, and human trafficking assistance; authorizing civil right of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [state]:

SECTION 1. TITLE. This act shall be known as the Every Mother Matters Act.

SECTION 2. DEFINITIONS.

(1) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

- (A) the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception;
- (B) an act intended to save the life or preserve the health of the unborn child;
- (C) removing a dead unborn child caused by spontaneous abortion; or
- (D) treatment for an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus

(2) "Abortion Provider" means a person who performs, prescribes, or administers abortion including at a facility where abortion is performed or administered, regardless of licensure.

(3) "Abuse" has the same meaning as in [refer to state penal code].

(4) "Agency" means an entity that contracts with the Department to provide the services required by this act.

(5) "Assault" means acts or offenses described in [refer to state penal code].

(6) "Care Agent" means a person employed by an agency to perform the services required by this act.

(7) "Coercion" means the acts or offenses described in [refer to state penal code].

(8) "Department" means the [state Department responsible for implementing chapter].

(9) "Human Trafficking" means the acts or offenses described in [refer to state penal code].

(10) "Medical Emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(11) "Neglect" has the same meaning as in [refer to state penal code].

- (12) "Participant" means an individual receiving Pregnancy Launch Program Services as provided in this act.
- (13) "Sexual Abuse" means the acts or offenses described in [refer to state penal code].

SECTION 3. PURPOSE. (A) The Pregnancy Launch Program shall:

- (1) encourage healthy childbirth;
- (2) support childbirth as an alternative to abortion;
- (3) promote family formation;
- (4) assist parents in establishing successful parenting techniques; and
- (5) increase families' economic self-sufficiency.

SECTION 4. THE PREGNANCY LAUNCH PROGRAM. (A) The Pregnancy Launch Program includes but is not limited to:

- (1) direct-to-participant marketing within the state;
- (2) licensed nurses, community health workers, or other individuals of equivalent expertise offering healthy pregnancy program services to Pregnancy Launch Program participants including:
 - (a) assistance assessing and evaluating needs related to pregnancy or parenting;
 - (b) medically accurate pregnancy-related information;
 - (c) assistance obtaining obstetric care, primary care, mental health or behavioral health counseling, and postpartum care;
 - (d) pregnancy-related support, including the pregnant woman's family's well-being and available support services; and
 - (e) information on adoption.
- (3) licensed social workers, nurses, community health workers, licensed professional counselors, or other individuals of equivalent experience offering care plan coordination services to Pregnancy Launch Program participants including:
 - (a) assistance for needs related to the pregnancy or parent's ability to care for his or her unborn child;
 - (b) developing a care plan of resources and support to address participant needs;
 - (c) referrals to local resources, including state and federal benefits programs and local charitable organizations;
 - (d) assistance applying for state and federal benefits programs;
 - (e) assistance accomplishing elements of the care plan;
 - (f) services related to postpartum depression and related referrals;
 - (g) assistance obtaining pediatric care and postpartum care;
 - (h) assistance obtaining substance abuse treatment and alcohol abuse treatment;
 - (i) education on available public and private resources to address the participant's socioeconomic needs;
 - (j) social services or assistance in obtaining social services related to education, professional certification, housing, employment, resume development, childcare, adoption services, financial needs, substance abuse, and health benefits plan coverage;

(k) assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and

(l) assistance obtaining mental health or behavioral counseling.

(4) notwithstanding any law to the contrary, healthy pregnancy program services and care plan coordination services of the Pregnancy Launch Program may be provided in person through existing facilities or remotely through a telephonic system or other comparable, synchronous direct audio or video technologies; and

(5) administrative support and expenses for the development or ongoing support of the Pregnancy Launch Program.

SECTION 5. PARTICIPANT ELIGIBILITY. (A) The Pregnancy Launch Program shall be available to:

(1) the biological parent of an unborn child;

(2) the biological or adoptive parent of a child under two years of age;

(3) a pregnant woman seeking to obtain an abortion in this state;

(4) a parent or legal guardian of a minor residing in this state who is pregnant or has a child under the age of two years; and

(5) participants whose pregnancies are terminated for up to six months after the date of termination.

SECTION 6. AGENCY REPORTING. (A) Each agency providing Pregnancy Launch Program services shall record and report monthly to the Department:

(1) the number of individuals who initiate care plan coordination;

(2) the number of individuals who initiate healthy pregnancy program services;

(3) the number individuals receiving support for:

(a) education;

(b) training for a professional certification;

(c) housing;

(d) employment;

(e) resume development;

(f) child care;

(g) adoption services

(h) financial needs;

(i) substance abuse; and

(j) health benefit coverage.

(4) the number of individuals needing assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking;

(5) the number of women needing assistance for postpartum depression and related referrals;

(6) the number of pregnant women needing assistance obtaining obstetric care, pediatric care, postpartum care, or mental health or behavioral counseling; and

(7) the number of pregnant women receiving assistance or education for issues related to their health, unborn children's health, pregnancy, abortion, fetal development, or birth.

SECTION 7. RESOURCE ACCESS OFFER. (A) An abortion provider shall not perform or induce an abortion unless he or she verifies that the pregnant woman received a resource access offer.

(B) A resource access offer under subsection (A) shall:

(1) inform the pregnant woman of and make available:

- (a) free healthy pregnancy program services offered under Section 4; and
- (b) free care plan coordination services offered under Section 4.

(2) offer education on public and private resources available to address the socioeconomic needs of the pregnant woman or the biological father of the unborn child;

(3) offer screening and assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and

(4) offer medically accurate information from the [state Woman's Right to Know Act].

(C) The pregnant woman:

(1) neither required to accept nor initiate any services offered through the resource access offer in order to obtain an abortion;

(2) may decline services under this chapter at any time; and

(3) is not required to provide any information to the care agent, agency, or Department.

(D) The resource access offer shall be provided at the expense of the state at no cost to the woman.

(E) This section does not apply in the case of a medical emergency. In a medical emergency, an abortion provider shall:

(1) include in the woman's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the abortion, certify to the Department the specific medical condition that constituted the emergency.

(F) This section shall become operative 18 months following the effective date of this act.

SECTION 8. DEPARTMENT REQUIREMENTS.(A) Not later than nine months following the effective date of this act, the Department shall:

(1) contract with one or more agencies sufficient to ensure that every woman seeking an abortion in [state] receives a resource access offer and the opportunity to receive Pregnancy Launch Program services in accordance with Section 4; and

(2) only contract with agencies that are capable of offering by telephonic means, other comparable synchronous direct audio or video technology, or in person:

- (a) resource access offers;
- (b) healthy pregnancy program services; and
- (c) care plan coordination.

SECTION 9. AGENCY REQUIREMENTS. (A) An agency and any of its subcontractors or agents providing services under this chapter shall not:

- (1) provide or prescribe abortion services or abortion aid;
- (2) directly or indirectly promote, refer for, facilitate, or assist women in obtaining abortion services or abortion aid;
- (3) own, operate, or affiliate with an abortion provider;
- (4) own, operate, or affiliate with a person who directly or indirectly promotes, refers for, facilitates, or assists women in obtaining an abortion;
- (5) employ an individual who has performed or induced an abortion in the last two years;
- (6) have a director, board member, officer, volunteer, or employee who performed or induced an abortion in the last two years or who serves in any of these roles for an entity described in subdivisions (1) and (2).

(B) An agency and any of its subcontractors or agents providing services under Sections 4 through 7 shall:

- (1) maintain the confidentiality of information obtained while performing services under this chapter, including complying with [state medical records privacy law]; and
- (2) complete a human trafficking training program in order to recognize signs of human trafficking and provide assistance to that individual.

SECTION 10. PROGRAM ADMINISTRATION. (A) The Department shall:

- (1) annually assign an agency's percentage of resource access offers based on the agency's number of participants initiating Pregnancy Launch Program services;
 - (2) establish a single toll-free number by which all pregnant women seeking an abortion in [state] may immediately receive a resource access offer;
 - (3) develop and maintain a secure process for completing the verification requirements of Section 11, which shall:
 - (a) generate a confirmation number devoid of personally identifying information;
 - (b) allow abortion providers to verify the completion of a resource access offer prior to performing or inducing an abortion in accordance with Section 11; and
 - (c) confirm completion of the resource access offer by 11:59 p.m. on the day it was made to the pregnant woman.
 - (4) adopt rules for the implementation of this chapter.
- (B) The Department shall not transmit any information to agencies and abortion providers regarding an agency or abortion provider's identity or location.

SECTION 11. VERIFICATION. (A) Before accepting any payment for abortion-related services and before abortion services begin, the abortion provider, or their agent, shall:

- (1) verify through the Department's secure confirmation process that the woman received a resource access offer from an agency;
- (2) record the confirmation number according to the Department's secure verification process in the woman's medical record; and

(3) take any other steps required by the Department to complete the secure confirmation process.

(B) This section shall become operative 18 months following the effective date of this act.

SECTION 12. ENFORCEMENT. (A) In order to enforce compliance with this act, the Department shall:

(1) at least once a year, audit 10 percent of each abortion provider's medical records at random and unannounced times;

(2) determine for each audited medical record whether the abortion provider fully complied with Section 11;

(3) upon finding that the abortion provider failed to comply with Section 11, audit all the abortion provider's medical records; and

(4) report audit results to [state medical licensing board] in order to revoke an abortion provider's medical license for failure to comply.

(B) Any abortion provider who fails to comply with Section 11 shall:

(1) be jointly and severally liable for a five thousand dollar (\$5,000) fine for each abortion performed or induced in violation of Section 11; and

(2) have his or her medical license revoked by [state medical licensing board].

(C) The Attorney General or any district attorney may file an action to recover a civil penalty assessed under this section and, if any civil penalty is recovered, shall also recover attorney fees and costs incurred in bringing the action.

(D) Any person has standing to bring and may bring a civil action against an abortion provider who:

(1) performs or induces an abortion in violation of any provision or requirement of this chapter;

(2) knowingly engages in conduct that aids or abets an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of any provision or requirement of this chapter, regardless of whether the person or entity knew or should have known that the abortion would be performed or induced in violation of this chapter; or

(3) intends to engage in the conduct described by subsections 12(D)(1) or 12(D)(2).

(E) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this chapter or engaging in acts that aid or abet violations of this chapter;

(2) statutory damages in an amount of not less than \$5,000 for each abortion that the defendant performed or induced or aided or abetted in violation of this chapter;

(3) nominal and compensatory damages if the plaintiff has suffered harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress; and

(4) costs and attorneys' fees.

(F) A court may not award relief under Subsection 12(E) in response to a violation of Subsection 11 if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (12)(E) in another action for that particular violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(G) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements or provisions of this chapter 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 defendant violated Section 11;

(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) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

(H) It is an affirmative defense if a person or entity sued under Subsection 12(E)(2) or (E)(3) reasonably believed, after conducting a reasonable investigation, that the abortion provider would comply with requirements of this chapter.

(1) The defendant has the burden of proving an affirmative defense under Subsection (H) by a preponderance of the evidence.

(I) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(J) This section shall become operative 18 months following the effective date of this act.

SECTION 13. CONSTRUCTION. (A) Nothing in this chapter shall be construed to:

(1) create or recognize a right to abortion;

(2) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this chapter;

(3) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion;

(4) restrict a political subdivision from regulating or prohibiting abortion in any manner;

(5) violate any 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' interpretation of the Fourteenth Amendment of the United States Constitution, or by [state Constitution]; or

(6) prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this chapter as a defense to any action, claim, or counterclaim brought against that litigant.

SECTION 14. VENUE.(A)Notwithstanding any other provision of law to the contrary, a civil action brought under Section 12 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 under Section 12 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.

SECTION 15. SOVEREIGN, GOVERNMENTAL and OFFICIAL IMMUNITY. (A) Notwithstanding any other law, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under Section 12, 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.

(B) Notwithstanding any other provision of law to the contrary, 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 or employee 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 to the contrary, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this chapter invalid or unconstitutional, or that would restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under Section 12, and no such relief may be awarded by any court of this state.

(F) Notwithstanding any other provision of law to the contrary, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (A), or the jurisdictional limitations imposed by Subsection (E), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.

(G) Notwithstanding any other provision of law to the contrary, any writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing

a civil action brought under Section 12 shall be regarded as a legal nullity and a violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.

(H) Notwithstanding any other provision of law to the contrary, any person who sues and seeks any writ, injunction, or declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 12, shall pay the costs and attorneys' fees of the person sued. A person may bring a civil action to recover these costs and attorneys' fees in state or federal court. It shall not be defense to a civil action brought under this chapter that:

- (1) the plaintiff failed to seek recovery of costs or attorneys' fees in the underlying action;
- (2) the court in the underlying action declined to recognize or enforce the requirements of 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 doctrines of issue or claim preclusion.

SECTION 16. SEVERABILITY. (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 legislature that every provision, section, subsection, sentence, clause, phrase, or word in this subchapter, and every application of the provisions in this subchapter to every person, group of persons, or circumstances, are severable from each other.

(B) If any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, 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 chapter, including preservation of the Pregnancy Launch Program, shall be severed from any applications that a court finds to be invalid, preempted, unconstitutional, and the valid applications shall remain in force, because it is the legislature's intent and priority that every valid application be allowed to stand alone.

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

(D) If any provision of this subchapter 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 that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the [name of state] 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 subchapter facially unconstitutional, when there are discrete applications of that provision 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 legislature 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 shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially unconstitutional is vacated or overruled.

SECTION 17. EFFECTIVE DATE. This act shall become effective on the first day of the first month following its passage and approval by the Governor, or its otherwise becoming law.