

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5524

By Delegate Coop-Gonzalez

Introduced February 08, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-2S-1, §16-2S-2, §16-2S-3, §16-2S-4, §16-2S-5, §16-2S-6, §16-2S-7, §16-
 3 2S-8, and §16-2S-9, all relating to regulating and restricting the shipment and receipt of
 4 abortion-inducing drugs and abortion-related paraphernalia; ensuring compliance with 18
 5 U.S.C. §§1461–1462; establishing a private right of action for those injured or killed by the
 6 use of abortion-inducing drugs; establishing venue rules for the private right of action;
 7 defining qualified Medicaid providers; establishing a fee-shifting regime in abortion
 8 litigation; including a short title; providing definitions; and addressing applicability,
 9 construction, jurisdiction, sovereign immunity, remedies, and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2S. ABORTION-INDUCING DRUGS AND ABORTION PARAPHERNALIA.

§16-2S-1.	Legislative	findings.
------------------	--------------------	------------------

1 The Legislature finds that:

2 (a) It is a federal crime to mail abortion-inducing drugs or abortion-related paraphernalia or
 3 to receive them in the mail, punishable by five years imprisonment. See 18 U.S.C. § 1461. It is also
 4 a federal crime to transport or receive abortion-inducing drugs or abortion-related paraphernalia in
 5 interstate or foreign commerce. See 18 U.S.C. § 1462(c). These statutes are fully enforceable
 6 now that *Roe v. Wade*, 410 U.S. 113 (1973), has been overruled, and the statute of limitations for
 7 each of these crimes is five years.

8 (b) Violations of 18 U.S.C. §§ 1461–1462 are predicate offenses under the federal
 9 Racketeer Influenced and Corrupt Organizations Act (RICO), which exposes abortion-pill
 10 distribution networks and their donors to civil RICO liability as well as criminal prosecution as a
 11 racketeering enterprise. See 18 U.S.C. § 1961 (defining "racketeering activity" to include
 12 violations of 18 U.S.C. § 1461–1462).

13 (c) The State of West Virginia calls upon state and federal prosecutors to investigate and
 14 prosecute every abortion-pill distribution network under federal racketeering laws, as well as 18
 15 U.S.C. § 1461–1462.

§16-2S-2. Definitions.

1 (a) For purposes of this article:

2 "Abortion" means the use of any instrument, medicine, drug, or any other substance or
 3 device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to
 4 cause the death and expulsion or removal of an embryo or a fetus. This term does not include the
 5 terms "intrauterine fetal demise" or "stillbirth" or "miscarriage" as defined in this section.

6 "Abortion-inducing drugs" includes mifepristone, misoprostol, and any drug or medication
 7 that is used to terminate the life of an unborn child. The term does not include:

8 (1) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or
 9 emergency contraception; or

10 (2) Drugs or medications that are possessed or distributed for a purpose that does not
 11 include the termination of a pregnancy, such as misoprostol that is possessed or distributed for the
 12 purpose of treating stomach ulcers.

13 "Abortion provider" means a person, corporation, organization, government or
 14 governmental subdivision or agency, business trust, estate, trust, partnership, association, or any
 15 other legal entity that performs elective abortions;

16 "Affiliate" means a person or entity who enters into with another person or entity a legal
 17 relationship created or governed by at least one written instrument, including a certificate of
 18 formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

19 (1) Common ownership, management, or control between the parties to the relationship;

20 (2) A franchise granted by the person or entity to the affiliate; or

21 (3) The granting or extension of a license or other agreement authorizing the affiliate to
22 use the other person's or entity's brand name, trademark, service mark, or other registered
23 identification mark.

24 "Elective abortion" means any abortion other than those performed or induced in response
25 to a medical emergency;

26 "Interactive computer service" means any information service, system, or access software
27 provider that provides or enables computer access by multiple users to a computer server,
28 including specifically a service or system that provides access to the Internet and such systems
29 operated or services offered by libraries or educational institutions;

30 "Intrauterine fetal demise" or "stillbirth" means the unintended or spontaneous loss of a
31 fetus after the 19th week of pregnancy.

32 "Medical emergency" means a condition or circumstance that so complicates the medical
33 condition of a patient as to necessitate an abortion to avert serious risk of the patient's death or
34 serious risk of substantial life-threatening physical impairment of a major bodily function, not
35 including psychological or emotional conditions. This term includes a circumstance in which it is
36 necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or
37 fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the
38 patient intends or may engage in conduct which results in the patient's death or in substantial and
39 irreversible physical impairment of a major bodily function.

40 "Miscarriage" means the unintended or spontaneous loss of an embryo or a fetus before
41 the 20th week of pregnancy. This term includes the medical terms "spontaneous abortion,"
42 "missed abortion," and "incomplete abortion".

§16-2S-3. Shipment or Receipt of Abortion-Related Paraphernalia.

1 (a) Except as provided by subsection (b), a person commits the crime of shipment or
2 receipt of abortion-related paraphernalia if that person, with the intent to aid or abet another
3 person's elective abortion:

4 (1) Violates or attempts to violate 18 U.S.C. § 1461 by using the mails for the mailing,
5 carriage in the mails, or delivery of:

6 (A) Any article or thing designed, adapted, or intended for producing abortion; or

7 (B) Any article, instrument, substance, drug, medicine, or thing which is advertised or
8 described in a manner calculated to lead another to use or apply it for producing abortion;

9 (2) Violates or attempts to violate 18 U.S.C. § 1462 by:

10 (A) Using any express company or other common carrier or interactive computer service
11 for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed,
12 adapted, or intended for producing abortion; or

13 (B) Knowingly taking or receiving from such express company or other common carrier or
14 interactive computer service, any matter or thing described in subsection (a)(2)(A); or

15 (3) Knowingly sends or transports, or attempts to send or transport, any drug or device
16 intended to aid or abet an elective abortion into or within the state of West Virginia.

17 (b) Any person who commits the crime of shipment or receipt of abortion-related
18 paraphernalia is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
19 correctional facility for a determinate sentence of not less than three nor more than 10 years.

20 (c) The Attorney General shall have a cause of action to sue any person who commits or
21 attempts or intends to commit the crime of shipment or receipt of abortion-related materials and
22 shall be entitled to recover:

23 (1) Declaratory and injunctive relief;

24 (2) Civil penalties of not less than \$1,000,000 for each of the defendant's violations or
25 attempted violations of subsection (A); and

26 (3) Costs and reasonable attorney's fees.

27 (d) Under no circumstance may a pregnant or formerly pregnant woman who violates this
28 section for the sole purpose of facilitating her own abortion be subject to prosecution or penalty
29 under this section.

30 (e) Notwithstanding any other law, this section shall apply extraterritorially, but only to the
31 maximum extent permitted by the Constitution of the United States and the Constitution of West
32 Virginia.

33 (f) Notwithstanding any other law, the law of West Virginia shall apply to any prosecution or
34 civil action brought under this Section, to the maximum extent permitted by the Constitution of the
35 United States and the Constitution of West Virginia.

§16-2S-4. Liability for Manufacturers and Distributors of Abortion-Inducing Drugs.

1 (a) Notwithstanding any other law, any person who manufactures, mails, distributes,
2 transports, delivers, or provides abortion-inducing drugs, or who aids or abets the manufacture,
3 distribution, transportation, delivery, or provision of abortion-inducing drugs, shall be strictly,
4 absolutely, and jointly and severally liable for wrongful death of any unborn child or pregnant
5 woman who dies from the use of abortion-inducing drugs, and for any personal injuries suffered by
6 any unborn child or pregnant woman from the use of abortion-inducing drugs: *Provided*, That no
7 lawsuit may be brought under this section against a provider or user of an interactive computer
8 service if such a lawsuit would be preempted by 47 U.S.C. § 230(c).

9 (b) It is an affirmative defense if a person sued under this section:

10 (1) Was unaware that it was engaged in the conduct described in subsection (a); and

11 (2) Took every reasonable precaution to ensure that it would not manufacture, mail,
12 distribute, transport, deliver, or provide abortion-inducing drugs, or aid or abet such acts.

13 The defendant has the burden of proving an affirmative defense under this Subsection by a
14 preponderance of the evidence.

15 (c) Notwithstanding any other law, if a plaintiff who brings suit under this section is unable
16 to identify the specific manufacturer of the drug that caused the death or injury, then liability shall
17 be apportioned among all manufacturers of abortion-inducing drugs in proportion to each
18 manufacturer's share of the market for abortion-inducing drugs, in accordance with *Sindell v.*
19 *Abbott Laboratories*, 607 P.2d 924 (Cal. 1980).

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

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

24 (1) Ignorance or mistake of law;

25 (2) A defendant's belief that the requirements or provisions of this article are
26 unconstitutional or were unconstitutional;

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

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

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

36 (6) Non-mutual issue preclusion or non-mutual claim preclusion;

37 (7) The consent of the plaintiff or the unborn child's mother to the abortion, or the consent
38 of one or both of the parents of the unborn child's mother to the abortion, or the consent of the legal
39 guardian of the unborn child's mother to the abortion;

40 (8) Contributory or comparative negligence; or

41 (9) Assumption of risk.

42 (f) Any waiver or purported waiver of the right to sue under this section shall be void as
43 against public policy and shall not be enforceable in any court.

44 (g) This section may not be construed to impose liability on speech or conduct protected by
45 the First Amendment of the United States Constitution, as made applicable to the states through

46 the Supreme Court of the United States' interpretation of the Fourteenth Amendment of the United
47 States Constitution, or by Article 3-7 of the West Virginia Constitution, as interpreted by the
48 Supreme Court of Appeals of West Virginia.

49 (h) Notwithstanding any other law, a civil action under this section may not be brought:

50 (1) Against the woman who used or sought to obtain abortion-inducing drugs to abort or
51 attempt to abort her unborn child;

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

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

58 (i) Notwithstanding any other law, including West Virginia Code § 56-3-33, the courts of this
59 state shall have personal jurisdiction over any defendant sued under this section to the maximum
60 extent permitted by the Fourteenth Amendment to the United States Constitution.

61 (j) Notwithstanding any other law, the law of West Virginia shall apply to any abortion
62 performed, induced, or attempted by or upon a resident or citizen of West Virginia, regardless of
63 where that abortion or attempted abortion occurs, and to any civil action brought under this
64 Section, to the maximum extent permitted by the Constitution of the United States and the
65 Constitution of West Virginia.

66 (k) Notwithstanding any other law, a civil action under this section shall not be subject to
67 any provision of the Equal Protection for Religion Act, codified at West Virginia Code § 35-1A-1, et
68 seq.

69 (l) Notwithstanding any other law, including W. Va. R. Civ. P. 23, a civil action under this
70 section may not be litigated on behalf of a plaintiff class or a defendant class, and no court may
71 certify a class under W. Va. R. Civ. P. 23 in any civil action brought under this section.

§16-2S-5. **Venue.**

1 (a) Notwithstanding any other law, including §56-1-1 of this code, a civil action brought
2 under §16-2S-4 of this code may be brought in:

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

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

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

9 (4) The county of residence for the claimant if the claimant is a natural person residing in
10 this state.

11 (b) If a civil action is brought under §16-2S-4 of this code in any one of the venues
12 described by Subsection (a), then the action may not be transferred to a different venue without
13 the written consent of all parties.

14 (c) Any contractual choice-of-forum provision that purports to require a civil action brought
15 under §16-2S-4 of this code to be litigated in a particular forum shall be void as against public
16 policy and may not be enforced in any state or federal court.

§16-2S-6. **Medicaid** **Providers.**

1 (a) Notwithstanding any other law, the following persons or entities may not be deemed
2 "qualified" providers under the state's Medicaid program, as that term is used in section
3 1902(a)(23) of the Social Security Act:

4 (1) Any person or entity that, with the intent to aid or abet another person's elective
5 abortion, violates 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or
6 delivery of:

7 (A) Any article or thing designed, adapted, or intended for producing an elective abortion;
8 or

9 (B) Any article, instrument, substance, drug, medicine, or thing which is advertised or
10 described in a manner calculated to lead another to use or apply it for producing an elective
11 abortion;

12 (2) Any person or entity that, with the intent to aid or abet another person's elective
13 abortion, violates 18 U.S.C. § 1462 by:

14 (A) Using any express company or other common carrier or interactive computer service
15 for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed,
16 adapted, or intended for producing an elective abortion; or

17 (B) Knowingly taking or receiving from such express company or other common carrier or
18 interactive computer service, any matter or thing described in subsection (a)(2)(A).

19 (3) Any person or entity that performs or participates in an elective abortion in violation of
20 the laws of this state, or in violation of the laws of the United States or the law of any state, local, or
21 foreign jurisdiction;

22 (4) Any abortion provider or affiliate of an abortion provider; and

23 (5) Any affiliate or a person or entity described in paragraphs (1) or (2).

24 (b) Notwithstanding any other law, the state and each of its officers and employees shall
25 have sovereign immunity in any lawsuit brought to restrain them from enforcing subsection (a), as
26 it impossible for a state or any state official to "violate" the federal Medicaid Act under *Ex parte*
27 *Young*, 209 U.S. 123 (1908). The Medicaid Act does not impose any legal requirements on states
28 that accept federal funds. It merely offers federal reimbursement to states that establish and
29 administer Medicaid programs that accord with federal reimbursement criteria and allows the
30 Secretary of Health and Human Services to decide (in his or her discretion) whether to withhold
31 some or all of federal money from state Medicaid programs that depart from these federal
32 reimbursement criteria. See 42 U.S.C. § 1396c. That a State may lose some federal money for its
33 policy choices does not make those choices unlawful.

34 (c) Notwithstanding any other law, no attorney representing the state, its political

35 subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized
36 or permitted to waive the immunity described in Subsection (b) or take any action that would result
37 in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal
38 nullity and an ultra vires act.

§16-2S-7. Fee Shifting.

1 (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm,
2 who seeks declaratory or injunctive relief to prevent this state, its political subdivision, any officer,
3 employee, or agent of the state or its political subdivisions, or any person in this state from
4 enforcing or bringing suit to enforce any statute, ordinance, rule, regulation, or any other type of
5 law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that
6 perform or promote abortions, in any state or federal court, or that represents any litigant seeking
7 such relief in any state or federal court, is jointly and severally liable to pay the costs and
8 reasonable attorney's fees of the prevailing party, including the costs and reasonable attorney's
9 fees that the prevailing party incurs in its efforts to recover costs and fees.

10 (b) For purposes of this section, a party is considered a prevailing party if a state or federal
11 court:

12 (1) Dismisses any claim or cause of action brought against it that seeks the declaratory or
13 injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

14 (2) Enters judgment in the party's favor on any such claim or cause of action.

15 (c) A prevailing party may recover costs and attorney's fees under this section only to the
16 extent that those costs and attorney's fees were incurred while defending claims or causes of
17 action on which the party prevailed.

18 (d) Regardless of whether a prevailing party sought to recover costs or attorney's fees in
19 the underlying action, a prevailing party under this section may bring a civil action to recover costs
20 and attorney's fees against a person, including an entity, attorney, or law firm, that sought
21 declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of

22 the date on which, as applicable:

23 (1) The dismissal or judgment described by Subsection (b) becomes final on the
24 conclusion of appellate review; or

25 (2) The time for seeking appellate review expires.

26 (e) It is not a defense to an action brought under Subsection (d) that:

27 (1) A prevailing party under this section failed to seek recovery of costs or attorney's fees
28 in the underlying action;

29 (2) The court in the underlying action declined to recognize or enforce the requirements of
30 this section; or

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

34 (f) Notwithstanding any other law, including §56-1-1 of this code, a civil action brought
35 under Subsection (d) may be brought in:

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

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

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

42 (4) The county of residence for the claimant if the claimant is a natural person residing in
43 this state.

44 (g) If a civil action is brought under Subsection (d) in any one of the venues described by
45 Subsection (f), then the action may not be transferred to a different venue without the written
46 consent of all parties.

47 (h) Any contractual choice-of-forum provision that purports to require a civil action under
48 Subsection (d) to be litigated in another forum shall be void as against public policy and may not be
49 enforced in any state or federal court.

§16-2S-8. Immunity From Suit and Limits on State-Court Jurisdiction.

1 (a) Notwithstanding any other law, the state and each of its officers and employees shall
2 have sovereign immunity, its political subdivisions and each of their officers and employees shall
3 have sovereign or governmental immunity, as appropriate, and each officer and employee of this
4 state or a political subdivision shall have official immunity (as well as sovereign or governmental
5 immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable
6 action that challenges the validity of any provision or application of this article, on constitutional
7 grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any
8 officer, employee, or agent of this state or a political subdivision from enforcing any provision or
9 application of this article, or from hearing, adjudicating, or docketing a civil action brought under
10 §16-2S-4 of this code, unless that immunity has been abrogated or preempted by federal law in a
11 manner consistent with the Constitution of the United States. The sovereign immunity conferred
12 by this section upon the state and each of its officers and employees includes the constitutional
13 sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of*
14 *Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in
15 both state and federal court and which may not be abrogated by Congress or by any state or
16 federal court except pursuant to congressional legislation authorized by section 5 of the
17 Fourteenth Amendment, by the Bankruptcy Clause of Article I, or by Congress's powers to raise
18 and support Armies and to provide and maintain a Navy, or by any other ground that might be
19 recognized by the Supreme Court of the United States.

20 (b) Notwithstanding any other law, the immunities conferred by Subsection (a) shall apply
21 in every court, both state and federal, and in every adjudicative proceeding of any type
22 whatsoever.

23 (c) Notwithstanding any other law, no provision of state law may be construed to waive or
24 abrogate an immunity described in Subsection (a) unless it expressly waives or abrogates
25 immunity with specific reference to this section.

26 (d) Notwithstanding any other law, no attorney representing the state, its political
27 subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized
28 or permitted to waive an immunity described in Subsection (a) or take any action that would result
29 in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal
30 nullity and an ultra vires act.

31 (e) Notwithstanding any other law, including Chapter 53 and Chapter 55 of this code, as
32 well as §51-1-3 of this code, no court of this state may award declaratory or injunctive relief, or any
33 type of stay or writ, including a writ of prohibition, that would pronounce any provision or
34 application of this article invalid or unconstitutional, or that would restrain the state, its political
35 subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person
36 from enforcing any provision or application of this article, or from hearing, adjudicating, docketing,
37 or filing a civil action brought under §16-2S-4 of this code, and no court of this state shall have
38 jurisdiction to consider any action, claim, or counterclaim that seeks such relief, unless such
39 jurisdiction is compelled by the Constitution of West Virginia, and no such action, claim, or
40 counterclaim may be litigated on behalf of a plaintiff or defendant class, notwithstanding W. Va. R.
41 Civ. P. 23, and no court may certify a plaintiff or defendant class in any action seeking the relief
42 described in this Subsection.

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

46 (g) Notwithstanding any other law, any judicial relief issued by a court of this state that
47 disregards the immunities conferred by Subsection (a), or the limitations on jurisdiction and relief
48 imposed by Subsection (e), shall be regarded as a legal nullity because it was issued by a court

49 without jurisdiction, and may not be enforced or obeyed by any officer, employee, or agent of this
50 state or a political subdivision, judicial or otherwise.

51 (h) Notwithstanding any other law, any writ, injunction, or declaratory judgment issued by a
52 court of this state that purports to restrain the state, its political subdivisions, any officer, employee,
53 or agent of this state or a political subdivision, or any person from hearing, adjudicating, docketing,
54 or filing a civil action brought under §16-2S-4 of this code shall be regarded as a legal nullity and a
55 violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or
56 obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or
57 otherwise.

58 (i) Notwithstanding any other law, any officer, employee, or agent of this state or a political
59 subdivision, judicial or otherwise, who issues, enforces, or obeys a writ, injunction, or declaratory
60 judgment described in Subsection (h) shall be subject to suit by any person who is prevented from
61 or delayed in bringing a civil action under §16-2S-4 of this code, and a claimant who prevails in an
62 action brought under this section shall recover:

63 (1) Injunctive relief;

64 (2) Compensatory damages;

65 (3) Punitive damages of not less than \$100,000; and

66 (4) Costs and reasonable attorney's fees.

67 (j) Notwithstanding any other law, any person who violates Subsections (e) or (h):

68 (1) May not assert and shall not be entitled to any type of immunity defense, including
69 sovereign immunity, governmental immunity, official immunity, or judicial immunity;

70 (2) May not and shall not be indemnified for any award of damages or costs and attorneys'
71 fees entered against them, or for the costs of their legal defense; and

72 (3) May not and shall not receive or obtain legal representation from the attorney general of
73 this state in any action brought under Subsection (i).

74 (k) Notwithstanding any other law, any person who sues and seeks any writ, injunction, or
75 declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing
76 a civil action brought under §16-2S-4 of this code, shall pay the costs and attorneys' fees of the
77 person sued. A person may bring a civil action to recover these costs and attorneys' fees in state
78 or federal court. It shall not be defense to a civil action brought under this Subsection that:

79 (1) The plaintiff failed to seek recovery of costs or attorney's fees in the underlying action;

80 (2) The court in the underlying action declined to recognize or enforce the requirements of
81 this Section; or

82 (3) The court in the underlying action held that any provisions of this Section are invalid,
83 unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim
84 preclusion.

85 (l) Notwithstanding any other law, including W. Va. R. Civ. P. 23, no court may certify a
86 plaintiff or defendant class with respect to any claim that seeks declaratory or injunctive relief, or
87 any type of writ, that would pronounce any provision or application of this article invalid or
88 unconstitutional, or that would restrain the state, its political subdivisions, any officer, employee, or
89 agent of this state or a political subdivision, or any person from enforcing any provision or
90 application of this article, or from hearing, adjudicating, docketing, or filing a civil action brought
91 under §16-2S-4 of this code.

§16-2S-9. Severability.

1 (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of
2 determining the severability of a state statute the Supreme Court of the United States held that an
3 explicit statement of legislative intent is controlling, it is the intent of the legislature that every
4 provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every
5 application of the provisions in this chapter to every person, group of persons, or circumstances,
6 are severable from each other.

7 (b) If any application of any provision in this chapter to any person, group of persons, or

8 circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason
9 whatsoever, then the remaining applications of that provision to all other persons and
10 circumstances shall be severed and preserved and shall remain in effect. All constitutionally valid
11 applications of the provisions in this chapter shall be severed from any applications that a court
12 finds to be invalid, preempted, or unconstitutional, because it is the legislature's intent and priority
13 that every single valid application of every statutory provision be allowed to stand alone.

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

19 (d) If any provision of this chapter is found by any court to be unconstitutionally vague, then
20 the applications of that provision that do not present constitutional vagueness problems shall be
21 severed and remain in force, consistent with the severability requirements of Subsections (a), (b),
22 and (c).

23 (e) No court may decline to enforce the severability requirements of Subsections (a), (b),
24 (c), and (d) on the ground that severance would "rewrite" the statute or involve the court in
25 legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from
26 enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking
27 activity, as the statute continues to contain the same words as before the court's decision. A
28 judicial injunction or declaration of unconstitutionality:

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

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

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

36 (f) If any state or federal court disregards any of the severability requirements in
37 Subsections (a), (b), (c), (d), or (e), and declares or finds any provision of this chapter facially
38 invalid, preempted, or unconstitutional, when there are discrete applications of that provision can
39 be enforced against a person, group of persons, or circumstances without violating federal law or
40 the federal or state constitutions, then that provision shall be interpreted, as a matter of state law,
41 as if the legislature had enacted a provision limited to the persons, group of persons, or
42 circumstances for which the provision's application will not violate federal law or the federal or
43 state constitutions, and every court shall adopt this saving construction of that provision until the
44 court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is
45 vacated or overruled.

NOTE: The purpose of this bill relates generally to regulating and restricting the shipment and receipt of abortion-inducing drugs and abortion-related paraphernalia. The bill ensures compliance with 18 U.S.C. § 1461–1462. The bill establishes a private right of action for those injured or killed by the use of abortion-inducing drugs. The bill establishes venue rules for the private right of action. The bill defines qualified Medicaid providers. The bill establishes a fee-shifting regime in abortion litigation. The bill includes a short title. The bill provides for definitions. Finally, the bill addresses applicability, construction, jurisdiction, sovereign immunity, remedies, and severability.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.