

115TH CONGRESS
2D SESSION

S. 2326

To prohibit discrimination against the unborn on the basis of sex, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 2018

Mr. KENNEDY introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To prohibit discrimination against the unborn on the basis
of sex, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prenatal Non-
5 discrimination Act of 2018” or “PRENDA”.

6 **SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Women are a vital part of American society
9 and culture and possess the same fundamental
10 human rights and civil rights as men.

1 (2) United States law prohibits the dissimilar
2 treatment of males and females who are similarly
3 situated and prohibits sex discrimination in various
4 contexts, including the provision of employment,
5 education, housing, health insurance coverage, and
6 athletics.

7 (3) A “sex-selection abortion” is an abortion
8 undertaken for purposes of eliminating an unborn
9 child of an undesired sex. Sex-selection abortion is
10 described by scholars and civil rights advocates as
11 an act of sex-based or gender-based violence, predi-
12 cated on sex discrimination. By definition, sex-selec-
13 tion abortions do not implicate the health of the
14 mother of the unborn, but instead are elective proce-
15 dures motivated by sex or gender bias.

16 (4) The targeted victims of sex-selection abor-
17 tions performed in the United States and worldwide
18 are overwhelmingly female.

19 (5) Sex-selection abortions are not expressly
20 prohibited by United States law, and only 7 States
21 ban abortions for reason of sex selection at some
22 point in pregnancy. Sex is an immutable char-
23 acteristic ascertainable at the earliest stages of
24 human development through existing medical tech-
25 nology and procedures commonly in use, including

1 maternal-fetal bloodstream DNA sampling, amnio-
2 centesis, chorionic villus sampling or “CVS”, and
3 obstetric ultrasound.

4 (6) Sex-selection abortions have the effect of di-
5 minishing the representation of women in the Amer-
6 ican population, and therefore, the American elec-
7 torate.

8 (7) Sex-selection abortion reinforces sex dis-
9 crimination and has no place in a civilized society.

10 (8) The history of the United States includes
11 many examples of sex discrimination. The people of
12 the United States ultimately responded in the
13 strongest possible legal terms by enacting a constitu-
14 tional amendment correcting an element of this dis-
15 crimination. Women, once subjected to sex discrimi-
16 nation that denied them the right to vote, now have
17 suffrage guaranteed by the 19th Amendment. The
18 elimination of discriminatory practices has been and
19 is among the highest priorities and greatest achieve-
20 ments of American history.

21 (9) Implicitly approving the discriminatory
22 practices of sex-selection abortion by choosing not to
23 prohibit them will reinforce sex discrimination, and
24 coarsen society to the value of females. Thus, Con-

1 gress has a compelling interest in acting—indeed it
2 must act—to prohibit sex-selection abortion.

3 (b) CONSTITUTIONAL AUTHORITY.—In accordance
4 with the above findings, Congress enacts the following
5 pursuant to Congress’ power under—

6 (1) the Commerce Clause;

7 (2) section 5 of the 14th Amendment to the
8 Constitution of the United States, including the
9 power to enforce the prohibition on government ac-
10 tion denying equal protection of the laws; and

11 (3) section 8 of article I of the Constitution of
12 the United States to make all laws necessary and
13 proper for the carrying into execution of powers
14 vested by the Constitution in the Government of the
15 United States.

16 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
17 **BASIS OF SEX.**

18 (a) IN GENERAL.—Chapter 13 of title 18, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“§ 250. Discrimination against the unborn on the**
22 **basis of sex**

23 “(a) IN GENERAL.—Whoever knowingly—

1 “(1) performs an abortion knowing that such
2 abortion is sought based on the sex or gender of the
3 child;

4 “(2) uses force or the threat of force to inten-
5 tionally injure or intimidate any person for the pur-
6 pose of coercing a sex-selection abortion;

7 “(3) solicits or accepts funds for the perform-
8 ance of a sex-selection abortion; or

9 “(4) transports a woman into the United States
10 or across a State line for the purpose of obtaining
11 a sex-selection abortion,

12 or attempts to do so, shall be fined under this title or im-
13 prisoned not more than 5 years, or both.

14 “(b) CIVIL REMEDIES.—

15 “(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-
16 TION IS PERFORMED.—A woman upon whom an
17 abortion has been performed or attempted in viola-
18 tion of subsection (a)(2) may in a civil action
19 against any person who engaged in a violation of
20 subsection (a) obtain appropriate relief.

21 “(2) CIVIL ACTION BY RELATIVES.—The father
22 of an unborn child who is the subject of an abortion
23 performed or attempted in violation of subsection
24 (a), or a maternal grandparent of the unborn child
25 if the pregnant woman is an unemancipated minor,

1 may in a civil action against any person who en-
 2 gaged in the violation, obtain appropriate relief, un-
 3 less the pregnancy or abortion resulted from the
 4 plaintiff's criminal conduct or the plaintiff consented
 5 to the abortion.

6 “(3) APPROPRIATE RELIEF.—Appropriate relief
 7 in a civil action under this subsection includes—

8 “(A) objectively verifiable money damages
 9 for all injuries, psychological and physical, in-
 10 including loss of companionship and support, oc-
 11 casioned by the violation of this section; and

12 “(B) punitive damages.

13 “(4) INJUNCTIVE RELIEF.—

14 “(A) IN GENERAL.—A qualified plaintiff
 15 may in a civil action obtain injunctive relief to
 16 prevent an abortion provider from performing
 17 or attempting further abortions in violation of
 18 this section.

19 “(B) DEFINITION.—In this paragraph the
 20 term ‘qualified plaintiff’ means—

21 “(i) a woman upon whom an abortion
 22 is performed or attempted in violation of
 23 this section;

24 “(ii) a maternal grandparent of the
 25 unborn child if the woman upon whom an

1 abortion is performed or attempted in vio-
 2 lation of this section is an unemancipated
 3 minor;

4 “(iii) the father of an unborn child
 5 who is the subject of an abortion per-
 6 formed or attempted in violation of sub-
 7 section (a); or

8 “(iv) the Attorney General.

9 “(5) ATTORNEYS FEES FOR PLAINTIFF.—The
 10 court shall award a reasonable attorney’s fee as part
 11 of the costs to a prevailing plaintiff in a civil action
 12 under this subsection.

13 “(c) BAR TO PROSECUTION.—A woman upon whom
 14 a sex-selection abortion is performed may not be pros-
 15 ecuted or held civilly liable for any violation of this section,
 16 or for a conspiracy to violate this section.

17 “(d) LOSS OF FEDERAL FUNDING.—A violation of
 18 subsection (a) shall be deemed for the purposes of title
 19 VI of the Civil Rights Act of 1964 to be discrimination
 20 prohibited by section 601 of that Act.

21 “(e) REPORTING REQUIREMENT.—A physician, phy-
 22 sician’s assistant, nurse, counselor, or other medical or
 23 mental health professional shall report known or suspected
 24 violations of any of this section to appropriate law enforce-
 25 ment authorities. Whoever violates this requirement shall

1 be fined under this title or imprisoned not more than 1
2 year, or both.

3 “(f) EXPEDITED CONSIDERATION.—It shall be the
4 duty of the United States district courts, United States
5 courts of appeal, and the Supreme Court of the United
6 States to advance on the docket and to expedite to the
7 greatest possible extent the disposition of any matter
8 brought under this section.

9 “(g) PROTECTION OF PRIVACY IN COURT PRO-
10 CEEDINGS.—

11 “(1) IN GENERAL.—Except to the extent the
12 Constitution or other similarly compelling reason re-
13 quires, in every civil or criminal action under this
14 section, the court shall make such orders as are nec-
15 essary to protect the anonymity of any woman upon
16 whom an abortion has been performed or attempted
17 if she does not give her written consent to such dis-
18 closure. Such orders may be made upon motion, but
19 shall be made sua sponte if not otherwise sought by
20 a party.

21 “(2) ORDERS TO PARTIES, WITNESSES, AND
22 COUNSEL.—The court shall issue appropriate orders
23 to the parties, witnesses, and counsel and shall di-
24 rect the sealing of the record and exclusion of indi-
25 viduals from courtrooms or hearing rooms to the ex-

1 tent necessary to safeguard the identity of the
 2 woman described in paragraph (1) from public dis-
 3 closure.

4 “(3) PSEUDONYM REQUIRED.—In the absence
 5 of written consent of the woman upon whom an
 6 abortion has been performed or attempted, any
 7 party, other than a public official, who brings an ac-
 8 tion under this section shall do so under a pseu-
 9 donym.

10 “(4) LIMITATION.—This subsection shall not be
 11 construed to conceal the identity of the plaintiff or
 12 of witnesses from the defendant or from attorneys
 13 for the defendant.

14 “(h) DEFINITIONS.—In this section—

15 “(1) the term ‘abortion’ means the act of using
 16 or prescribing any instrument, medicine, drug, or
 17 any other substance, device, or means with the in-
 18 tent to—

19 “(A) kill the unborn child of a woman
 20 known to be pregnant; or

21 “(B) terminate the pregnancy of a woman
 22 known to be pregnant, with an intention other
 23 than—

1 “(i) after viability to produce a live
 2 birth and preserve the life and health of
 3 the child born alive; or

4 “(ii) to remove a dead unborn child;
 5 and

6 “(2) the term ‘sex-selection abortion’ means an
 7 abortion undertaken for purposes of eliminating an
 8 unborn child of an undesired sex.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 at the beginning of chapter 13 of title 18, United States
 11 Code, is amended by adding after the item relating to sec-
 12 tion 249 the following new item:

“250. Discrimination against the unborn on the basis of sex.”.

13 **SEC. 4. SEVERABILITY.**

14 If any portion of this Act, or the amendments made
 15 by this Act, or the application thereof to any person or
 16 circumstance is held invalid, such invalidity shall not af-
 17 fect the portions or applications of this Act which can be
 18 given effect without the invalid portion or application.

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