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

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. KENNEDY (for himself, Mrs. BLACKBURN, Mr. BRAUN, Mr. CORNYN, Mr. COTTON, Mr. CRAMER, Mr. CRUZ, Mr. DAINES, Ms. ERNST, Mrs. HYDE-SMITH, Mr. INHOFE, Mr. MARSHALL, Mr. ROUNDS, Mr. SASSE, and Mr. THUNE) 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” or “PRENDA”.

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

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

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

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

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

19 (4) The targeted victims of sex-selection abor-
20 tions performed in the United States and worldwide
21 are overwhelmingly female.

22 (5) Sex-selection abortions are not expressly
23 prohibited by United States law, and only 7 States
24 ban abortions for reason of sex selection at some
25 point in pregnancy. Sex is an immutable char-

1 acteristic ascertainable at the earliest stages of
2 human development through existing medical tech-
3 nology and procedures commonly in use, including
4 maternal-fetal bloodstream DNA sampling, amnio-
5 centesis, chorionic villus sampling or “CVS”, and
6 obstetric ultrasound.

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

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

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

1 (9) Implicitly approving the discriminatory
2 practices of sex-selection abortion by choosing not to
3 prohibit them will reinforce sex discrimination, and
4 coarsen society to the value of females. Thus, Con-
5 gress has a compelling interest in acting—indeed it
6 must act—to prohibit sex-selection abortion.

7 (b) CONSTITUTIONAL AUTHORITY.—In accordance
8 with the above findings, Congress enacts the following
9 pursuant to Congress’ power under—

10 (1) the Commerce Clause;

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

15 (3) section 8 of article I of the Constitution of
16 the United States to make all laws necessary and
17 proper for the carrying into execution of powers
18 vested by the Constitution in the Government of the
19 United States.

20 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
21 **BASIS OF SEX.**

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

1 **“§ 250. Discrimination against the unborn on the**
2 **basis of sex**

3 “(a) IN GENERAL.—Whoever knowingly—

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

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

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

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

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

17 “(b) CIVIL REMEDIES.—

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

24 “(2) CIVIL ACTION BY RELATIVES.—The father
25 of an unborn child who is the subject of an abortion
26 performed or attempted in violation of subsection

1 (a), or a maternal grandparent of the unborn child
 2 if the pregnant woman is an unemancipated minor,
 3 may in a civil action against any person who en-
 4 gaged in the violation, obtain appropriate relief, un-
 5 less the pregnancy or abortion resulted from the
 6 plaintiff's criminal conduct or the plaintiff consented
 7 to the abortion.

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

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

14 “(B) punitive damages.

15 “(4) INJUNCTIVE RELIEF.—

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

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

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

1 “(ii) a maternal grandparent of the
2 unborn child if the woman upon whom an
3 abortion is performed or attempted in vio-
4 lation of this section is an unemancipated
5 minor;

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

10 “(iv) the Attorney General.

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

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

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

23 “(e) REPORTING REQUIREMENT.—A physician, phy-
24 sician’s assistant, nurse, counselor, or other medical or
25 mental health professional shall report known or suspected

1 violations of any of this section to appropriate law enforce-
2 ment authorities. Whoever violates this requirement shall
3 be fined under this title or imprisoned not more than 1
4 year, or both.

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

11 “(g) PROTECTION OF PRIVACY IN COURT PRO-
12 CEEDINGS.—

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

23 “(2) ORDERS TO PARTIES, WITNESSES, AND
24 COUNSEL.—The court shall issue appropriate orders
25 to the parties, witnesses, and counsel and shall di-

1 rect the sealing of the record and exclusion of indi-
2 viduals from courtrooms or hearing rooms to the ex-
3 tent necessary to safeguard the identity of the
4 woman described in paragraph (1) from public dis-
5 closure.

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

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

16 “(h) DEFINITIONS.—In this section—

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

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

23 “(B) terminate the pregnancy of a woman
24 known to be pregnant, with an intention other
25 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:

 “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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