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1 A bill to be entitled
2 An act relating to abortion; providing a short title;
3 providing findings and intent; amending s. 390.0111,
4 F.S.; requiring a person performing a termination of
5 pregnancy to first sign an affidavit stating that he
6 or she is not performing the termination of pregnancy
7 because of the child's sex or race and has no
8 knowledge that the pregnancy is being terminated
9 because of the child's sex or race; providing criminal
10 penalties; prohibiting performing or inducing a
11 termination of pregnancy knowing that it is sought
12 based on the sex or race of the child or the race of a
13 parent of that child, using force or the threat of
14 force to intentionally injure or intimidate any person
15 for the purpose of coercing a sex-selection or race-
16 selection termination of pregnancy, and soliciting or
17 accepting moneys to finance a sex-selection or race-
18 selection termination of pregnancy; providing criminal
19 penalties; providing for injunctions against specified
20 violations; providing for civil actions by certain
21 persons with respect to certain violations; specifying
22 appropriate relief in such actions; authorizing civil
23 fines of up to a specified amount against physicians
24 and other medical or mental health professionals who
25 knowingly fail to report known violations; providing
26 that a woman on whom a sex-selection or race-selection
27 termination of pregnancy is performed is not subject
28 to criminal prosecution or civil liability for any

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 violation or for a conspiracy to commit a violation;
30 conforming a cross-reference; providing an effective
31 date.

32
33 WHEREAS, women are a vital part of American society and
34 culture and possess the same fundamental human rights and civil
35 rights as men, and

36 WHEREAS, United States law prohibits the dissimilar
37 treatment for males and females who are similarly situated and
38 prohibits sex discrimination in various contexts, including the
39 provision of employment, education, housing, health insurance
40 coverage, and athletics, and

41 WHEREAS, sex is an immutable characteristic, and is
42 ascertainable at the earliest stages of human development
43 through existing medical technology and procedures commonly in
44 use, including maternal-fetal bloodstream DNA sampling,
45 amniocentesis, chorionic villus sampling or "CVS," and medical
46 sonography. In addition to medically assisted sex-determinations
47 carried out by medical professionals, a growing sex-
48 determination niche industry has developed and is marketing low-
49 cost commercial products, widely advertised and available, that
50 aid in the sex determination of an unborn child without the aid
51 of medical professionals. Experts have demonstrated that the
52 sex-selection industry is on the rise and predict that it will
53 continue to be a growing trend in the United States. Sex
54 determination is always a necessary step to the procurement of a
55 sex-selection abortion, and

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56 WHEREAS, a "sex-selection abortion" is an abortion
57 undertaken for purposes of eliminating an unborn child of an
58 undesired sex. Sex-selection abortion is barbaric, and described
59 by scholars and civil rights advocates as an act of sex-based or
60 gender-based violence predicated on sex discrimination. By
61 definition, sex-selection abortions do not implicate the health
62 of the mother of the unborn, but instead are elective procedures
63 motivated by sex or gender bias, and

64 WHEREAS, the targeted victims of sex-selection abortions
65 performed in the United States and worldwide are overwhelmingly
66 female. The selective abortion of females is female infanticide,
67 the intentional killing of unborn females, due to the preference
68 for male offspring or "son preference." Son preference is
69 reinforced by the low value associated, by some segments of the
70 world community, with female offspring. Those segments tend to
71 regard female offspring as financial burdens to a family over
72 their lifetime due to their perceived inability to earn or
73 provide financially for the family unit as can a male. In
74 addition, due to social and legal convention, female offspring
75 are less likely to carry on the family name. "Son preference" is
76 one of the most evident manifestations of sex or gender
77 discrimination in any society, undermining female equality, and
78 fueling the elimination of females' right to exist in instances
79 of sex-selection abortion, and

80 WHEREAS, sex-selection abortions are not expressly
81 prohibited by United States law and the laws of 48 states. Sex-
82 selection abortions are performed in the United States. In a
83 March 2008 report published in the Proceedings of the National

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84 Academy of Sciences, Columbia University economists Douglas
85 Almond and Lena Edlund examined the sex ratio of United States-
86 born children and found "evidence of sex selection, most likely
87 at the prenatal stage." The data revealed obvious "son
88 preference" in the form of unnatural sex-ratio imbalances within
89 certain segments of the United States population, primarily
90 those segments tracing their ethnic or cultural origins to
91 countries where sex-selection abortion is prevalent. The
92 evidence strongly suggests that some Americans are exercising
93 sex-selection abortion practices within the United States
94 consistent with discriminatory practices common to their country
95 of origin, or the country to which they trace their ancestry.
96 While sex-selection abortions are more common outside the United
97 States, the evidence reveals that female infanticide is also
98 occurring in the United States, and

99 WHEREAS, the American public supports a prohibition of sex-
100 selection abortion. In a March 2006 Zogby International poll, 86
101 percent of Americans agreed that sex-selection abortion should
102 be illegal, yet only two states have proscribed sex-selection
103 abortion, and

104 WHEREAS, despite the failure of the United States to
105 proscribe sex-selection abortion, the United States Congress has
106 expressed repeatedly, through Congressional resolution, strong
107 condemnation of policies promoting sex-selection abortion in the
108 "Communist Government of China." Likewise, at the 2007 United
109 Nation's Annual Meeting of the Commission on the Status of
110 Women, 51st Session, the United States' delegation spearheaded a
111 resolution calling on countries to eliminate sex-selective

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112 | abortion, a policy directly contradictory to the permissiveness
113 | of current United States' law, which places no restriction on
114 | the practice of sex-selection abortion. The United Nations
115 | Commission on the Status of Women has urged governments of all
116 | nations "to take necessary measures to prevent . . . prenatal
117 | sex selection," and

118 | WHEREAS, a 1990 report by Harvard University economist
119 | Amartya Sen estimated that more than 100 million women were
120 | "demographically missing" from the world as early as 1990 due to
121 | sexist practices, including sex-selection abortion. Many experts
122 | believe sex-selection abortion is the primary cause. As of 2008,
123 | estimates of women missing from the world range in the hundreds
124 | of millions, and

125 | WHEREAS, countries with longstanding experience with sex-
126 | selection abortion—such as the Republic of India, the United
127 | Kingdom, and the People's Republic of China—have enacted
128 | complete bans on sex-selection abortion, and have steadily
129 | continued to strengthen prohibitions and penalties. The United
130 | States, by contrast, has no law in place to restrict sex-
131 | selection abortion, establishing the United States as affording
132 | less protection from sex-based infanticide than the Republic of
133 | India or the People's Republic of China, whose recent practices
134 | of sex-selection abortion were vehemently and repeatedly
135 | condemned by United States congressional resolutions and by the
136 | United States' Ambassador to the Commission on the Status of
137 | Women. Public statements from within the medical community
138 | reveal that citizens of other countries come to the United
139 | States for sex-selection procedures that would be criminal in

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140 their country of origin. Because the United States permits
141 abortion on the basis of sex, the United States may effectively
142 function as a "safe haven" for those who seek to have American
143 physicians do what would otherwise be criminal in their home
144 countries—a sex-selection abortion, most likely late-term, and

145 WHEREAS, the American medical community opposes sex-
146 selection abortion. The American College of Obstetricians and
147 Gynecologists, commonly known as "ACOG," stated in its February
148 2007 Ethics Committee Opinion, Number 360, that sex-selection is
149 inappropriate for family planning purposes because sex-selection
150 "ultimately supports sexist practices." Likewise, the American
151 Society for Reproductive Medicine has opined that sex-selection
152 for family planning purposes is ethically problematic,
153 inappropriate, and should be discouraged, and

154 WHEREAS, sex-selection abortion results in an unnatural
155 sex-ratio imbalance. An unnatural sex-ratio imbalance is
156 undesirable, due to the inability of the numerically predominant
157 sex to find mates. Experts worldwide document that a significant
158 sex-ratio imbalance in which males numerically predominate can
159 be a cause of increased violence and militancy within a society.
160 Likewise, an unnatural sex-ratio imbalance gives rise to the
161 commoditization of humans in the form of human trafficking, and
162 a consequent increase in kidnapping and other violent crime, and

163 WHEREAS, sex-selection abortions have the effect of
164 diminishing the representation of women in the American
165 population, and therefore, the American electorate, and

166 WHEREAS, sex-selection abortion reinforces sex
167 discrimination and has no place in a civilized society, and

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168 WHEREAS, minorities are a vital part of American society
169 and culture and possess the same fundamental human rights and
170 civil rights as the majority, and

171 WHEREAS, United States law prohibits the dissimilar
172 treatment of persons of different races who are similarly
173 situated. United States law prohibits discrimination on the
174 basis of race in various contexts, including the provision of
175 employment, education, housing, health insurance coverage, and
176 athletics, and

177 WHEREAS, a "race-selection abortion" is an abortion
178 performed for purposes of eliminating an unborn child because
179 the child or a parent of the child is of an undesired race.
180 Race-selection abortion is barbaric, and described by civil
181 rights advocates as an act of race-based violence, predicated on
182 race discrimination. By definition, race-selection abortions do
183 not implicate the health of mother of the unborn, but instead
184 are elective procedures motivated by race bias, and

185 WHEREAS, no state has enacted law to proscribe the
186 performance of race-selection abortions, and

187 WHEREAS, race-selection abortions have the effect of
188 diminishing the number of minorities in the American population
189 and therefore, the American electorate, and

190 WHEREAS, race-selection abortion reinforces racial
191 discrimination and has no place in a civilized society, and

192 WHEREAS, the history of the United States includes examples
193 of both sex discrimination and race discrimination. The people
194 of the United States ultimately responded in the strongest
195 possible legal terms by enacting constitutional amendments

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196 correcting elements of such discrimination. Women, once
197 subjected to sex discrimination that denied them the right to
198 vote, now have suffrage guaranteed by the Nineteenth Amendment
199 to the United States Constitution. African-Americans, once
200 subjected to race discrimination through slavery that denied
201 them equal protection of the laws, now have that right
202 guaranteed by the Fourteenth Amendment to the United States
203 Constitution. The elimination of discriminatory practices has
204 been and is among the highest priorities and greatest
205 achievements of American history, and

206 WHEREAS, implicitly approving the discriminatory practices
207 of sex-selection abortion and race-selection abortion by
208 choosing not to prohibit them will reinforce these inherently
209 discriminatory practices, and evidence a failure to protect a
210 segment of certain unborn Americans because those unborn are of
211 a sex or racial makeup that is disfavored. Sex-selection and
212 race-selection abortions trivialize the value of the unborn on
213 the basis of sex or race, reinforcing sex and race
214 discrimination, and coarsening society to the humanity of all
215 vulnerable and innocent human life, making it increasingly
216 difficult to protect such life. Thus, this state has a
217 compelling interest in acting—indeed it must act—to prohibit
218 sex-selection abortion and race-selection abortion, NOW,
219 THEREFORE,

220
221 Be It Enacted by the Legislature of the State of Florida:
222

223 Section 1. This act may be cited as the "Susan B. Anthony
 224 and Frederick Douglass Prenatal Nondiscrimination and Equal
 225 Opportunity for Life Act".

226 Section 2. The Legislature declares that there is no place
 227 for discrimination and inequality in human society in the form
 228 of abortions due to a child's sex or race. Sex-selection and
 229 race-selection abortions are elective procedures that do not in
 230 any way implicate a woman's health. The purpose of this act is
 231 to protect unborn children from prenatal discrimination in the
 232 form of being subjected to an abortion based on the child's sex
 233 or race by prohibiting sex-selection or race-selection
 234 abortions. The intent of this act is not to establish or
 235 recognize a right to an abortion or to make lawful an abortion
 236 that is currently unlawful.

237 Section 3. Subsections (6) through (13) of section
 238 390.0111, Florida Statutes, are renumbered as subsections (7)
 239 through (14), respectively, a new subsection (6) is added to
 240 that section, and present subsections (2) and (10) of that
 241 section are amended, to read:

242 390.0111 Termination of pregnancies.—

243 (2) PERFORMANCE BY PHYSICIAN; REQUIRED AFFIDAVIT.—

244 (a) A ~~No~~ termination of pregnancy may not ~~shall~~ be
 245 performed at any time except by a physician as defined in s.
 246 390.011.

247 (b) A person may not knowingly perform a termination of
 248 pregnancy before that person completes and signs an affidavit
 249 stating that he or she is not performing the termination of
 250 pregnancy because of the child's sex or race and has no

251 knowledge that the pregnancy is being terminated because of the
 252 child's sex or race.

253 (6) SEX AND RACE SELECTION.—

254 (a) A person may not knowingly do any of the following:

255 1. Perform or induce a termination of pregnancy knowing
 256 that it is sought based on the sex or race of the child or the
 257 race of a parent of that child.

258 2. Use force or the threat of force to intentionally
 259 injure or intimidate any person for the purpose of coercing a
 260 sex-selection or race-selection termination of pregnancy.

261 3. Solicit or accept moneys to finance a sex-selection or
 262 race-selection termination of pregnancy.

263 (b) The Attorney General or the state attorney may bring
 264 an action in circuit court to enjoin an activity described in
 265 paragraph (a).

266 (c) The father of the unborn child who is married to the
 267 mother at the time she receives a sex-selection or race-
 268 selection termination of pregnancy, or, if the mother has not
 269 attained 18 years of age at the time of the termination of
 270 pregnancy, the maternal grandparents of the unborn child, may
 271 bring a civil action on behalf of the unborn child to obtain
 272 appropriate relief with respect to a violation of paragraph (a).
 273 The court may award reasonable attorney fees as part of the
 274 costs in an action brought pursuant to this subsection. For the
 275 purposes of this subsection, "appropriate relief" includes
 276 monetary damages for all injuries, whether psychological,
 277 physical, or financial, including loss of companionship and
 278 support, resulting from the violation.

279 (d) A physician, physician's assistant, nurse, counselor,
 280 or other medical or mental health professional who knowingly
 281 does not report known violations of this subsection to
 282 appropriate law enforcement authorities shall be subject to a
 283 civil fine of not more than \$10,000.

284 (e) A woman on whom a sex-selection or race-selection
 285 termination of pregnancy is performed is not subject to criminal
 286 prosecution or civil liability for any violation of this
 287 subsection or for a conspiracy to violate this subsection.

288 (11)-(10) PENALTIES FOR VIOLATION.—Except as provided in
 289 subsections (3) and (8) ~~(7)~~:

290 (a) Any person who willfully performs, or actively
 291 participates in, a termination of pregnancy procedure in
 292 violation of the requirements of this section commits a felony
 293 of the third degree, punishable as provided in s. 775.082, s.
 294 775.083, or s. 775.084.

295 (b) Any person who performs, or actively participates in,
 296 a termination of pregnancy procedure in violation of the
 297 provisions of this section which results in the death of the
 298 woman commits a felony of the second degree, punishable as
 299 provided in s. 775.082, s. 775.083, or s. 775.084.

300 Section 4. This act shall take effect October 1, 2012.