

HB 845

2013

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

29 | whom a sex-selection or race-selection termination of
30 | pregnancy is performed is not subject to criminal
31 | prosecution or civil liability for any violation or
32 | for a conspiracy to commit a violation; conforming a
33 | cross-reference; providing an effective date.
34 |

35 | WHEREAS, women are a vital part of American society and
36 | culture and possess the same fundamental human rights and civil
37 | rights as men, and

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

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

HB 845

2013

56 | determination is always a necessary step to the procurement of a
57 | sex-selection abortion, and

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

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

82 | WHEREAS, sex-selection abortions are not expressly
83 | prohibited by United States law and the laws of 48 states. Sex-

84 selection abortions are performed in the United States. In a
85 March 2008 report published in the Proceedings of the National
86 Academy of Sciences, Columbia University economists Douglas
87 Almond and Lena Edlund examined the sex ratio of United States-
88 born children and found "evidence of sex selection, most likely
89 at the prenatal stage." The data revealed obvious "son
90 preference" in the form of unnatural sex-ratio imbalances within
91 certain segments of the United States population, primarily
92 those segments tracing their ethnic or cultural origins to
93 countries where sex-selection abortion is prevalent. The
94 evidence strongly suggests that some Americans are exercising
95 sex-selection abortion practices within the United States
96 consistent with discriminatory practices common to their country
97 of origin or the country to which they trace their ancestry.
98 While sex-selection abortions are more common outside the United
99 States, the evidence reveals that female infanticide is also
100 occurring in the United States, and

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

106 WHEREAS, despite the failure of the United States to
107 proscribe sex-selection abortion, the United States Congress has
108 expressed repeatedly, through Congressional resolution, strong
109 condemnation of policies promoting sex-selection abortion in the
110 "Communist Government of China." Likewise, at the 2007 United
111 Nations' Annual Meeting of the Commission on the Status of

HB 845

2013

112 Women, 51st Session, the United States delegation spearheaded a
113 resolution calling on countries to eliminate sex-selective
114 abortion, a policy directly contradictory to the permissiveness
115 of current United States law, which places no restriction on the
116 practice of sex-selection abortion. The United Nations
117 Commission on the Status of Women has urged governments of all
118 nations "to take necessary measures to prevent . . . prenatal
119 sex selection," and

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

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

HB 845

2013

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

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

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

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

HB 845

2013

168 WHEREAS, sex-selection abortion reinforces sex
169 discrimination and has no place in a civilized society, and
170 WHEREAS, minorities are a vital part of American society
171 and culture and possess the same fundamental human rights and
172 civil rights as the majority, and
173 WHEREAS, United States law prohibits the dissimilar
174 treatment of persons of different races who are similarly
175 situated. United States law prohibits discrimination on the
176 basis of race in various contexts, including the provision of
177 employment, education, housing, health insurance coverage, and
178 athletics, and
179 WHEREAS, a "race-selection abortion" is an abortion
180 performed for purposes of eliminating an unborn child because
181 the child or a parent of the child is of an undesired race.
182 Race-selection abortion is barbaric and described by civil
183 rights advocates as an act of race-based violence, predicated on
184 race discrimination. By definition, race-selection abortions do
185 not implicate the health of mother of the unborn but instead are
186 elective procedures motivated by race bias, and
187 WHEREAS, no state has enacted law to proscribe the
188 performance of race-selection abortions, and
189 WHEREAS, race-selection abortions have the effect of
190 diminishing the number of minorities in the American population
191 and, therefore, the American electorate, and
192 WHEREAS, race-selection abortion reinforces racial
193 discrimination and has no place in a civilized society, and
194 WHEREAS, the history of the United States includes examples
195 of both sex discrimination and race discrimination. The people

HB 845

2013

196 of the United States ultimately responded in the strongest
197 possible legal terms by enacting constitutional amendments
198 correcting elements of such discrimination. Women, once
199 subjected to sex discrimination that denied them the right to
200 vote, now have suffrage guaranteed by the Nineteenth Amendment
201 to the United States Constitution. African Americans, once
202 subjected to race discrimination through slavery that denied
203 them equal protection under the law, now have that right
204 guaranteed by the Fourteenth Amendment to the United States
205 Constitution. The elimination of discriminatory practices has
206 been and is among the highest priorities and greatest
207 achievements of American history, and

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

222
223 Be It Enacted by the Legislature of the State of Florida:

224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251

Section 1. This act may be cited as the "Prenatal Nondiscrimination Act."

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

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

390.0111 Termination of pregnancies.—

(2) PERFORMANCE BY PHYSICIAN; REQUIRED AFFIDAVIT.—

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

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

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

254 | (6) SEX AND RACE SELECTION.—

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

256 | 1. Perform, induce, or actively participate in a
 257 | termination of pregnancy knowing that it is sought based on the
 258 | sex or race of the child or the race of a parent of that child.

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

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

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

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

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

285 (e) A mother of an unborn child on whom a sex-selection or
 286 race-selection termination of pregnancy is performed who has not
 287 attained 18 years of age at the time of the termination of
 288 pregnancy is not subject to criminal prosecution or civil
 289 liability for any violation of this subsection or for a
 290 conspiracy to violate this subsection.

291 (11)~~(10)~~ PENALTIES FOR VIOLATION.—Except as provided in
 292 subsections (3) and (8) ~~(7)~~:

293 (a) Any person who willfully performs, or actively
 294 participates in, a termination of pregnancy procedure in
 295 violation of the requirements of this section commits a felony
 296 of the third degree, punishable as provided in s. 775.082, s.
 297 775.083, or s. 775.084.

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

303 Section 4. This act shall take effect October 1, 2013.