

116TH CONGRESS
1ST SESSION

H. R. 2373

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2019

Mrs. WAGNER (for herself, Mrs. HARTZLER, Mr. LAMBORN, Mr. BABIN, Mr. BRADY, Mr. LUETKEMEYER, Mr. MOONEY of West Virginia, Mr. HICE of Georgia, Mr. CONAWAY, Mr. GIBBS, Mr. ABRAHAM, Mr. MULLIN, Mr. BYRNE, Mr. HUIZENGA, Mr. NORMAN, Mr. GOSAR, Mr. KELLY of Mississippi, Mr. FLORES, Mr. HARRIS, Mr. OLSON, Mr. BANKS, Mr. SMITH of Missouri, Mr. WEBER of Texas, Mr. ROUZER, Mr. HUDSON, Mr. WATKINS, Mr. MARSHALL, Mr. JOYCE of Pennsylvania, Mr. THOMPSON of Pennsylvania, Mr. WRIGHT, Mr. LIPINSKI, Mr. JOHNSON of Louisiana, Mr. WALBERG, Mr. COLE, Mrs. WALORSKI, Mr. ESTES, Mr. STEWART, Mr. BIGGS, Mr. LATTA, Mr. JORDAN, Mr. WEBSTER of Florida, Mr. GROTHMAN, Mr. LOUDERMILK, Mr. ALLEN, Mr. FORTENBERRY, Mr. DUFFY, Mr. PALAZZO, Mrs. LESKO, Mr. BROOKS of Alabama, and Mr. MEADOWS) introduced the following bill; which was 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Prenatal Non-
3 discrimination Act of 2019” or the “PRENDA Act of
4 2019”.

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

6 (a) FINDINGS.—The Congress makes the following
7 findings:

8 (1) Women and girls possess the same funda-
9 mental human rights and civil rights as men and are
10 essential to the formation of stable, peaceful soci-
11 eties.

12 (2) Approximately 126,000,000 women and
13 girls are missing from the world population due to
14 systematic violence against women and girls, par-
15 ticularly sex-selection abortions, according to the
16 United Nations Population Fund.

17 (3) United States law prohibits the dissimilar
18 treatment of males and females who are similarly
19 situated and prohibits sex discrimination in various
20 contexts, including the provision of employment,
21 education, housing, health insurance coverage, and
22 athletics.

23 (4) A “sex-selection abortion” is an abortion
24 undertaken for purposes of eliminating an unborn
25 child of an undesired sex. Sex-selection abortion is
26 described by scholars and civil rights advocates as

1 an act of sex-based or gender-based violence, predi-
2 cated on sex discrimination. By definition, sex-selec-
3 tion abortions do not implicate the health of the
4 mother of the unborn, but instead are elective proce-
5 dures motivated by sex or gender bias.

6 (5) The targeted victims of sex-selection abor-
7 tions performed in the United States and worldwide
8 are overwhelmingly female.

9 (6) Sex-selection abortions are not expressly
10 prohibited by United States law, and only 7 States
11 ban abortions for reason of sex selection at some
12 point in pregnancy. Sex is an immutable char-
13 acteristic ascertainable at the earliest stages of
14 human development through existing medical tech-
15 nology and procedures commonly in use, including
16 maternal-fetal bloodstream DNA sampling, amnio-
17 centesis, chorionic villus sampling or “CVS”, and
18 obstetric ultrasound.

19 (7) Sex-selection abortions have the effect of di-
20 minishing the representation of women in the Amer-
21 ican population, and therefore, the American elec-
22 torate.

23 (8) Sex-selection abortions reinforce sex dis-
24 crimination and have no place in a civilized society.

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

12 (10) Implicitly approving the discriminatory
13 practices of sex-selection abortion by choosing not to
14 prohibit them will reinforce sex discrimination, and
15 coarsen society to the value of females. Thus, Con-
16 gress has a compelling interest in acting—indeed it
17 must act—to prohibit sex-selection abortion.

18 (b) CONSTITUTIONAL AUTHORITY.—In accordance
19 with the above findings, Congress enacts the following
20 pursuant to Congress’ power under—

21 (1) the Commerce Clause;

22 (2) section 5 of the 14th Amendment, including
23 the power to enforce the prohibition on government
24 action denying equal protection of the laws; and

1 “(b) CIVIL REMEDIES.—

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

8 “(2) CIVIL ACTION BY RELATIVES.—The father
9 of an unborn child who is the subject of an abortion
10 performed or attempted in violation of subsection
11 (a), or a maternal grandparent of the unborn child
12 if the pregnant woman is an unemancipated minor,
13 may in a civil action against any person who en-
14 gaged in the violation, obtain appropriate relief, un-
15 less the pregnancy or abortion resulted from the
16 plaintiff’s criminal conduct or the plaintiff consented
17 to the abortion.

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

20 “(A) objectively verifiable money damages
21 for all injuries, psychological and physical, in-
22 cluding loss of companionship and support, oc-
23 casioned by the violation of this section; and

24 “(B) punitive damages.

25 “(4) INJUNCTIVE RELIEF.—

1 “(A) IN GENERAL.—A qualified plaintiff
2 may in a civil action obtain injunctive relief to
3 prevent an abortion provider from performing
4 or attempting further abortions in violation of
5 this section.

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

8 “(i) a woman upon whom an abortion
9 is performed or attempted in violation of
10 this section;

11 “(ii) a maternal grandparent of the
12 unborn child if the woman upon whom an
13 abortion is performed or attempted in vio-
14 lation of this section is an unemancipated
15 minor;

16 “(iii) the father of an unborn child
17 who is the subject of an abortion per-
18 formed or attempted in violation of sub-
19 section (a); or

20 “(iv) the Attorney General.

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

1 “(c) BAR TO PROSECUTION.—A woman upon whom
2 a sex-selection abortion is performed may not be pros-
3 ecuted or held civilly liable for any violation of this section,
4 or for a conspiracy to violate under this section, for a con-
5 spiracy to violate this section, or for an offense under sec-
6 tion 2, 3, or 4 of this title based on a violation of this
7 section.

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

12 “(e) REPORTING REQUIREMENT.—A physician, phy-
13 sician’s assistant, nurse, counselor, or other medical or
14 mental health professional shall report known or suspected
15 violations of any of this section to appropriate Federal,
16 State, and local law enforcement authorities. Whoever vio-
17 lates this requirement shall be fined under this title or
18 imprisoned not more than 1 year, or both.

19 “(f) EXPEDITED CONSIDERATION.—It shall be the
20 duty of the United States district courts, United States
21 courts of appeal, and the Supreme Court of the United
22 States to advance on the docket and to expedite to the
23 greatest possible extent the disposition of any matter
24 brought under this section.

1 “(g) PROTECTION OF PRIVACY IN COURT PRO-
2 CEEDINGS.—

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

13 “(2) ORDERS TO PARTIES, WITNESSES, AND
14 COUNSEL.—The court shall issue appropriate orders
15 to the parties, witnesses, and counsel and shall di-
16 rect the sealing of the record and exclusion of indi-
17 viduals from courtrooms or hearing rooms to the ex-
18 tent necessary to safeguard the identity of the
19 woman described in paragraph (1) from public dis-
20 closure.

21 “(3) PSEUDONYM REQUIRED.—In the absence
22 of written consent of the woman upon whom an
23 abortion has been performed or attempted, any
24 party, other than a public official, who brings an ac-

1 tion under this section shall do so under a pseu-
2 donym.

3 “(4) LIMITATION.—This subsection shall not be
4 construed to conceal the identity of the plaintiff or
5 of witnesses from the defendant or from attorneys
6 for the defendant.

7 “(h) DEFINITION.—In this section—

8 “(1) the term ‘abortion’ means the act of using
9 or prescribing any instrument, medicine, drug, or
10 any other substance, device, or means with the in-
11 tent to—

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

14 “(B) terminate the pregnancy of a woman
15 known to be pregnant, with an intention other
16 than—

17 “(i) after viability to produce a live
18 birth and preserve the life and health of
19 the child born alive; or

20 “(ii) to remove a dead unborn child;
21 and

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

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

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

5 **SEC. 4. SEVERABILITY.**

6 If any portion of this Act or the application thereof
7 to any person or circumstance is held invalid, such inva-
8 lidity shall not affect the portions or applications of this
9 Act which can be given effect without the invalid portion
10 or application.

○