H. R. 6465

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2022

Mrs. WAGNER (for herself, Mr. ALLEN, Mr. JORDAN, Mr. HICE of Georgia, Mr. DUNCAN, Mr. BROOKS, Mr. LATTA, Mr. JOHNSON of Louisiana, Mr. BANKS, Mr. SESSIONS, Mr. KELLER, Mr. JOYCE of Pennsylvania, Mr. BAIRD, Ms. HERRELL, Mr. MOONEY, Mrs. LESKO, Mr. GROTHMAN, Mr. ADERHOLT, Mr. LAMBORN, Mr. STEUBE, Mr. FORTEENBERY, Mr. ROSE, Mrs. HINSON, Mr. GUEST, Mr. KELLY of Mississippi, Mr. MURPHY of North Carolina, Mr. NORMAN, Mr. BABIN, Mr. JACKSON, Mr. BUDD, and Mr. LATUMMER) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prenatal Non-discrimination Act of 2022” or the “PRENDA Act of 2022”.
SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.

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

(1) Women and girls possess the same fundamental human rights and civil rights as men and are essential to the formation of stable, peaceful societies.

(2) Approximately 126,000,000 women and girls are missing from the world population due to systematic violence against women and girls, particularly sex-selection abortions, according to the United Nations Population Fund.

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

(4) A “sex-selection abortion” is an abortion undertaken for purposes of eliminating an unborn child of an undesired sex. Sex-selection abortion is described by scholars and civil rights advocates as an act of sex-based or gender-based violence, predicated on sex discrimination. By definition, sex-selection abortions do not implicate the health of the
mother of the unborn, but instead are elective procedures motivated by sex or gender bias.

(5) The targeted victims of sex-selection abortions performed in the United States and worldwide are overwhelmingly female.

(6) Sex-selection abortions are not expressly prohibited by United States law, and only 7 States ban abortions for reason of sex selection at some point in pregnancy. Sex is an immutable characteristic ascertainable at the earliest stages of human development through existing medical technology and procedures commonly in use, including maternal-fetal bloodstream DNA sampling, amniocentesis, chorionic villus sampling or “CVS”, and obstetric ultrasound.

(7) Sex-selection abortions have the effect of diminishing the representation of women in the American population, and therefore, the American electorate.

(8) Sex-selection abortions reinforce sex discrimination and have no place in a civilized society.

(9) The history of the United States includes many examples of sex discrimination. The people of the United States ultimately responded in the strongest possible legal terms by enacting a constitu-
tional amendment correcting an element of this dis-

1    crimination. Women, once subjected to sex discrimi-

2    nation that denied them the right to vote, now have

3    suffrage guaranteed by the 19th Amendment. The

4    elimination of discriminatory practices has been and

5    is among the highest priorities and greatest achieve-

6    ments of American history.

7    (10) Implicitly approving the discriminatory

8    practices of sex-selection abortion by choosing not to

9    prohibit them will reinforce sex discrimination, and

10   coarsen society to the value of females. Thus, Con-

11   gress has a compelling interest in acting—indeed it

12   must act—to prohibit sex-selection abortion.

13   (b) CONSTITUTIONAL AUTHORITY.—In accordance

14   with the above findings, Congress enacts the following

15   pursuant to Congress’ power under—

16   (1) the Commerce Clause;

17   (2) section 5 of the 14th Amendment, including

18   the power to enforce the prohibition on government

19   action denying equal protection of the laws; and

20   (3) section 8 of article I to make all laws nec-

21   essary and proper for the carrying into execution of

22   powers vested by the Constitution in the Govern-

23   ment of the United States.
SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE BASIS OF SEX.

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

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

“(a) IN GENERAL.—Whoever knowingly—

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

“(2) uses force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection abortion;

“(3) solicits or accepts funds for the performance of a sex-selection abortion; or

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

or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) CIVIL REMEDIES.—

“(1) CIVIL ACTION BY WOMAN ON WHOM ABORTION IS PERFORMED.—A woman upon whom an abortion has been performed or attempted in violation of subsection (a)(2) may in a civil action
against any person who engaged in a violation of subsection (a) obtain appropriate relief.

“(2) CIVIL ACTION BY RELATIVES.—The father of an unborn child who is the subject of an abortion performed or attempted in violation of subsection (a), or a maternal grandparent of the unborn child if the pregnant woman is an unemancipated minor, may in a civil action against any person who engaged in the violation, obtain appropriate relief, unless the pregnancy or abortion resulted from the plaintiff’s criminal conduct or the plaintiff consented to the abortion.

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

“(A) objectively verifiable money damages for all injuries, psychological and physical, including loss of companionship and support, occasioned by the violation of this section; and

“(B) punitive damages.

“(4) INJUNCTIVE RELIEF.—

“(A) IN GENERAL.—A qualified plaintiff may in a civil action obtain injunctive relief to prevent an abortion provider from performing or attempting further abortions in violation of this section.
“(B) DEFINITION.—In this paragraph the term ‘qualified plaintiff’ means—

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

“(ii) a maternal grandparent of the unborn child if the woman upon whom an abortion is performed or attempted in violation of this section is an unemancipated minor;

“(iii) the father of an unborn child who is the subject of an abortion performed or attempted in violation of subsection (a); or

“(iv) the Attorney General.

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

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

section.

“(d) LOSS OF FEDERAL FUNDING.—A violation of

subsection (a) shall be deemed for the purposes of title
VI of the Civil Rights Act of 1964 to be discrimination

prohibited by section 601 of that Act.

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

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

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

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

“(2) ORDERS TO PARTIES, WITNESSES, AND COUNSEL.—The court shall issue appropriate orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the woman described in paragraph (1) from public disclosure.

“(3) PSEUDONYM REQUIRED.—In the absence of written consent of the woman upon whom an abortion has been performed or attempted, any party, other than a public official, who brings an action under this section shall do so under a pseudonym.

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

“(h) DEFINITION.—In this section—
“(1) the term ‘abortion’ means the act of using
or prescribing any instrument, medicine, drug, or
any other substance, device, or means with the in-
tent to—

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

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

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

“(ii) to remove a dead unborn child;

and

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

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

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

SEC. 4. SEVERABILITY.

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