

114TH CONGRESS  
1ST SESSION

# S. 48

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

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IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2015

Mr. VITTER introduced the following bill; which was read twice and referred  
to the Committee on the Judiciary

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## A BILL

To prohibit discrimination against the unborn on the basis  
of sex or gender, 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 of 2015” or “PRENDA”.

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

7 (a) FINDINGS.—Congress makes the following find-  
8 ings:

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) Sex is an immutable characteristic ascer-  
11          tainable at the earliest stages of human development  
12          through existing medical technology and procedures  
13          commonly in use, including maternal-fetal blood-  
14          stream DNA sampling, amniocentesis, chorionic  
15          villus sampling or “CVS”, and obstetric ultrasound.  
16          In addition to medically assisted sex determination,  
17          a growing sex determination niche industry has de-  
18          veloped and is marketing low-cost commercial prod-  
19          ucts, widely advertised and available, that aid in the  
20          sex determination of an unborn child without the aid  
21          of medical professionals. Experts have demonstrated  
22          that the sex-selection industry is on the rise and pre-  
23          dict that it will continue to be a growing trend in  
24          the United States. Sex determination is always a

1 necessary step to the procurement of a sex-selection  
2 abortion.

3 (4) A “sex-selection abortion” is an abortion  
4 undertaken for purposes of eliminating an unborn  
5 child based on the sex or gender of the child. Sex-  
6 selection abortion is barbaric, and described by  
7 scholars and civil rights advocates as an act of sex-  
8 based or gender-based violence, predicated on sex  
9 discrimination. Sex-selection abortions are typically  
10 late-term abortions performed in the 2nd or 3rd tri-  
11 mester of pregnancy, after the unborn child has de-  
12 veloped sufficiently to feel pain. Substantial medical  
13 evidence proves that an unborn child can experience  
14 pain at 20 weeks after conception, and perhaps sub-  
15 stantially earlier. By definition, sex-selection abor-  
16 tions do not implicate the health of the mother of  
17 the unborn, but instead are elective procedures moti-  
18 vated by sex or gender bias.

19 (5) The targeted victims of sex-selection abor-  
20 tions performed in the United States and worldwide  
21 are overwhelmingly female. The selective abortion of  
22 females is female infanticide, the intentional killing  
23 of unborn females, due to the preference for male  
24 offspring or “son preference”. Son preference is re-  
25 inforced by the low value associated, by some seg-

1       ments of the world community, with female off-  
2       spring. Those segments tend to regard female off-  
3       spring as financial burdens to a family over their  
4       lifetime due to their perceived inability to earn or  
5       provide financially for the family unit as can a male.  
6       In addition, due to social and legal convention, fe-  
7       male offspring are less likely to carry on the family  
8       name. “Son preference” is one of the most evident  
9       manifestations of sex or gender discrimination in  
10      any society, undermining female equality, and fuel-  
11      ing the elimination of females’ right to exist in in-  
12      stances of sex-selection abortion.

13           (6) Sex-selection abortions are not expressly  
14      prohibited by United States law or the laws of 47  
15      States. Sex-selection abortions are performed in the  
16      United States. In a March 2008 report published in  
17      the Proceedings of the National Academy of  
18      Sciences, Columbia University economists Douglas  
19      Almond and Lena Edlund examined the sex ratio of  
20      United States-born children and found “evidence of  
21      sex selection, most likely at the prenatal stage”. The  
22      data revealed obvious “son preference” in the form  
23      of unnatural sex-ratio imbalances within certain seg-  
24      ments of the United States population, primarily  
25      those segments tracing their ethnic or cultural ori-

1 gins to countries where sex-selection abortion is  
2 prevalent. The evidence strongly suggests that some  
3 Americans are exercising sex-selection abortion prac-  
4 tices within the United States consistent with dis-  
5 criminatory practices common to their country of or-  
6 igin, or the country to which they trace their ances-  
7 try. While sex-selection abortions are more common  
8 outside the United States, the evidence reveals that  
9 female feticide is also occurring in the United  
10 States.

11 (7) The American public supports a prohibition  
12 of sex-selection abortion. In a March 2006 Zogby  
13 International poll, 86 percent of Americans agreed  
14 that sex-selection abortion should be illegal, yet only  
15 3 States proscribe sex-selection abortion.

16 (8) Despite the failure of the United States to  
17 proscribe sex-selection abortion, the United States  
18 Congress has expressed repeatedly, through congres-  
19 sional resolution, strong condemnation of policies  
20 promoting sex-selection abortion in the “Communist  
21 Government of China”. Likewise, at the 2007  
22 United Nations Annual Meeting of the Commission  
23 on the Status of Women, 51st Session, the United  
24 States delegation spearheaded a resolution calling on  
25 countries to condemn sex-selective abortion, a policy

1 directly contradictory to the permissiveness of cur-  
2 rent United States law, which places no restriction  
3 on the practice of sex-selection abortion. The United  
4 Nations Commission on the Status of Women has  
5 urged governments of all nations “to take necessary  
6 measures to prevent . . . prenatal sex selection”.

7 (9) A 1990 report by Harvard University econ-  
8 omist Amartya Sen, estimated that more than  
9 100,000,000 women were “demographically missing”  
10 from the world as early as 1990 due to sexist prac-  
11 tices, including sex-selection abortion. Many experts  
12 believe sex-selection abortion is the primary cause.  
13 Current estimates of women missing from the world  
14 range in the hundreds of millions.

15 (10) Countries with longstanding experience  
16 with sex-selection abortion—such as the Republic of  
17 India, the United Kingdom, and the People’s Repub-  
18 lic of China—have enacted restrictions on sex-selec-  
19 tion, and have steadily continued to strengthen pro-  
20 hibitions and penalties. The United States, by con-  
21 trast, has no law in place to restrict sex-selection  
22 abortion, establishing the United States as affording  
23 less protection from sex-based feticide than the Re-  
24 public of India or the People’s Republic of China,  
25 whose recent practices of sex-selection abortion were

1       vehemently and repeatedly condemned by United  
2       States congressional resolutions and by the United  
3       States Ambassador to the Commission on the Status  
4       of Women. Public statements from within the med-  
5       ical community reveal that citizens of other countries  
6       come to the United States for sex-selection proce-  
7       dures that would be criminal in their country of ori-  
8       gin. Because the United States permits abortion on  
9       the basis of sex, the United States may effectively  
10      function as a “safe haven” for those who seek to  
11      have American physicians do what would otherwise  
12      be criminal in their home countries—a sex-selection  
13      abortion, most likely late-term.

14           (11) The American medical community opposes  
15      sex-selection. The American Congress of Obstetri-  
16      cians and Gynecologists, commonly known as  
17      “ACOG”, stated in its 2007 Ethics Committee Opin-  
18      ion, Number 360, that sex-selection is inappropriate  
19      because it “ultimately supports sexist practices”.  
20      The American Society of Reproductive Medicine  
21      (commonly known as “ASRM”) 2004 Ethics Com-  
22      mittee Opinion on sex-selection notes that central to  
23      the controversy of sex-selection is the potential for  
24      “inherent gender discrimination”, . . . the “risk of  
25      psychological harm to sex-selected offspring (i.e., by

1 placing on them expectations that are too high)”,  
2 . . . and “reinforcement of gender bias in society as  
3 a whole”. Embryo sex-selection, ASRM notes, re-  
4 mains “vulnerable to the judgment that no matter  
5 what its basis, [the method] identifies gender as a  
6 reason to value one person over another, and it sup-  
7 ports socially constructed stereotypes of what gender  
8 means”. In doing so, it not only “reinforces possi-  
9 bilities of unfair discrimination, but may trivialize  
10 human reproduction by making it depend on the se-  
11 lection of nonessential features of offspring”. The  
12 ASRM ethics opinion continues, “ongoing problems  
13 with the status of women in the United States make  
14 it necessary to take account of concerns for the im-  
15 pact of sex-selection on goals of gender equality”.  
16 The American Association of Pro-Life Obstetricians  
17 and Gynecologists, an organization with hundreds of  
18 members—many of whom are former abortionists—  
19 makes the following declaration: “Sex selection abor-  
20 tions are more graphic examples of the damage that  
21 abortion inflicts on women. In addition to increasing  
22 premature labor in subsequent pregnancies, increas-  
23 ing suicide and major depression, and increasing the  
24 risk of breast cancer in teens who abort their first  
25 pregnancy and delay childbearing, sex selection abor-



1 tions are often targeted at fetuses simply because  
2 the fetus is female. As physicians who care for both  
3 the mother and her unborn child, the American As-  
4 sociation of Pro-Life Obstetricians and Gynecologists  
5 vigorously opposes aborting fetuses because of their  
6 gender.”. The President’s Council on Bioethics pub-  
7 lished a Working Paper stating the council’s belief  
8 that society’s respect for reproductive freedom does  
9 not prohibit the regulation or prohibition of “sex  
10 control”, defined as the use of various medical tech-  
11 nologies to choose the sex of one’s child. The publi-  
12 cation expresses concern that “sex control might  
13 lead to . . . dehumanization and a new eugenics”.

14 (12) Sex-selection abortion results in an un-  
15 natural sex-ratio imbalance. An unnatural sex-ratio  
16 imbalance is undesirable, due to the inability of the  
17 numerically predominant sex to find mates. Experts  
18 worldwide document that a significant sex-ratio im-  
19 balance in which males numerically predominate can  
20 be a cause of increased violence and militancy within  
21 a society. Likewise, an unnatural sex-ratio imbalance  
22 gives rise to the commoditization of humans in the  
23 form of human trafficking, and a consequent in-  
24 crease in kidnapping and other violent crime.

1           (13) Sex-selection abortions have the effect of  
2           diminishing the representation of women in the  
3           American population, and therefore, the American  
4           electorate.

5           (14) Sex-selection abortion reinforces sex dis-  
6           crimination and has no place in a civilized society.

7           (15) The history of the United States includes  
8           examples of sex discrimination. The people of the  
9           United States ultimately responded in the strongest  
10          possible legal terms by enacting a constitutional  
11          amendment correcting elements of such discrimina-  
12          tion. Women, once subjected to sex discrimination  
13          that denied them the right to vote, now have suf-  
14          frage guaranteed by the 19th amendment. The  
15          elimination of discriminatory practices has been and  
16          is among the highest priorities and greatest achieve-  
17          ments of American history.

18          (16) Implicitly approving the discriminatory  
19          practice of sex-selection abortion by choosing not to  
20          prohibit them will reinforce these inherently dis-  
21          criminatory practices, and evidence a failure to pro-  
22          tect a segment of certain unborn Americans because  
23          those unborn are of a sex that is disfavored. Sex-se-  
24          lection abortions trivialize the value of the unborn on  
25          the basis of sex, reinforcing sex discrimination, and

1 coarsening society to the humanity of all vulnerable  
 2 and innocent human life, making it increasingly dif-  
 3 ficult to protect such life. Thus, Congress has a  
 4 compelling interest in acting—indeed it must act—  
 5 to prohibit sex-selection abortion.

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

9 (1) the Commerce Clause;

10 (2) section 5 of the 14th Amendment, including  
 11 the power to enforce the prohibition on Government  
 12 action denying equal protection of the laws; and

13 (3) section 8 of article I to make all laws nec-  
 14 essary and proper for the carrying into execution of  
 15 powers vested by the Constitution in the Govern-  
 16 ment of the United States.

17 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**  
 18 **BASIS OF SEX.**

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

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

24 **“(a) IN GENERAL.—Whoever knowingly—**

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

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

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

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

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

14           “(b) CIVIL REMEDIES.—

15           “(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-  
16 TION IS PERFORMED.—A woman upon whom an  
17 abortion has been performed pursuant to a violation  
18 of subsection (a)(2) may in a civil action against any  
19 person who engaged in a violation of subsection (a)  
20 obtain appropriate relief.

21           “(2) CIVIL ACTION BY RELATIVES.—The father  
22 of an unborn child who is the subject of an abortion  
23 performed or attempted in violation of subsection  
24 (a), or a maternal grandparent of the unborn child  
25 if the pregnant woman is an unemancipated minor,

1       may in a civil action against any person who en-  
2       gaged in the violation, obtain appropriate relief, un-  
3       less the pregnancy resulted from the plaintiff's  
4       criminal conduct or the plaintiff consented to the  
5       abortion.

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

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

12              “(B) punitive damages.

13              “(4) INJUNCTIVE RELIEF.—

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

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

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

1                   “(ii) any person who is the spouse or  
2                   parent of a woman upon whom an abortion  
3                   is performed in violation of this section; or

4                   “(iii) the Attorney General.

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

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

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

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

1       “(f) EXCEPTION.—A woman upon whom a sex-selec-  
2 tion abortion is performed may not be prosecuted or held  
3 civilly liable for any violation of this section, or for a con-  
4 spiracy to violate this section.

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

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

17           “(2) ORDERS TO PARTIES, WITNESSES, AND  
18 COUNSEL.—The court shall issue appropriate orders  
19 under paragraph (1) to the parties, witnesses, and  
20 counsel and shall direct the sealing of the record and  
21 exclusion of individuals from courtrooms or hearing  
22 rooms to the extent necessary to safeguard her iden-  
23 tity from public disclosure. Each such order shall be  
24 accompanied by specific written findings explaining  
25 why the anonymity of the woman must be preserved

1 from public disclosure, why the order is essential to  
2 that end, how the order is narrowly tailored to serve  
3 that interest, and why no reasonable less restrictive  
4 alternative exists.

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

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

15 “(h) DEFINITIONS.—

16 “(1) The term ‘abortion’ means the act of using  
17 or prescribing any instrument, medicine, drug, or  
18 any other substance, device, or means with the in-  
19 tent to terminate the clinically diagnosable preg-  
20 nancy of a woman, with knowledge that the termi-  
21 nation by those means will with reasonable likelihood  
22 cause the death of the unborn child, unless the act  
23 is done with the intent to—

24 “(A) save the life or preserve the health of  
25 the unborn child;



1           “(B) remove a dead unborn child caused  
2           by spontaneous abortion; or

3           “(C) remove an ectopic pregnancy.

4           “(2) The term ‘sex-selection abortion’ is an  
5           abortion undertaken for purposes of eliminating an  
6           unborn child based on the sex or gender of the  
7           child.”.

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

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

12       **SEC. 4. SEVERABILITY.**

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

18       **SEC. 5. RULE OF CONSTRUCTION.**

19           Nothing in this Act shall be construed to require that  
20           a health care provider has an affirmative duty to inquire  
21           as to the motivation for the abortion, absent the health  
22           care provider having knowledge or information that the  
23           abortion is being sought based on the sex or gender of  
24           the child.

○