By Senator Siplin

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A bill to be entitled

An act relating to abortion; providing a short title; providing findings and intent; amending s. 390.0111, F.S.; requiring a person performing a termination of pregnancy to first sign 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 knowledge that the pregnancy is being terminated because of the child's sex or race; providing criminal penalties; prohibiting performing or inducing a termination of pregnancy knowing that it is sought based on the sex or race of the child or the race of a parent of that child, using force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing a sex-selection or race-selection termination of pregnancy, and soliciting or accepting moneys to finance a sex-selection or race-selection termination of pregnancy; providing criminal penalties; providing for injunctions against specified violations; providing for civil actions by certain persons with respect to certain violations; specifying appropriate relief in such actions; authorizing civil fines of up to a specified amount against physicians and other medical or mental health professionals who knowingly fail to report known violations; providing that a woman on whom a sex-selection or race-selection termination of pregnancy is performed is not subject to criminal prosecution or civil liability for any violation or for a conspiracy to commit a violation;

conforming a cross-reference; providing an effective date.

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

WHEREAS, United States law prohibits the dissimilar treatment for 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, and

WHEREAS, sex is an immutable characteristic, and is 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 medical sonography. In addition to medically assisted sex-determinations carried out by medical professionals, a growing sex-determination niche industry has developed and is marketing low-cost commercial products, widely advertised and available, that aid in the sex determination of an unborn child without the aid of medical professionals. Experts have demonstrated that the sex-selection industry is on the rise and predict that it will continue to be a growing trend in the United States. Sex determination is always a necessary step to the procurement of a sex-selection abortion, and

WHEREAS, a "sex-selection abortion" is an abortion undertaken for purposes of eliminating an unborn child of an undesired sex. Sex-selection abortion is barbaric, and 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, and

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

WHEREAS, sex-selection abortions are not expressly prohibited by United States law and the laws of 48 states. Sex-selection abortions are performed in the United States. In a March 2008 report published in the Proceedings of the National Academy of Sciences, Columbia University economists Douglas Almond and Lena Edlund examined the sex ratio of United States-born children and found "evidence of sex selection, most likely at the prenatal stage." The data revealed obvious "son

preference" in the form of unnatural sex-ratio imbalances within certain segments of the United States population, primarily those segments tracing their ethnic or cultural origins to countries where sex-selection abortion is prevalent. The evidence strongly suggests that some Americans are exercising sex-selection abortion practices within the United States consistent with discriminatory practices common to their country of origin, or the country to which they trace their ancestry. While sex-selection abortions are more common outside the United States, the evidence reveals that female infanticide is also occurring in the United States, and

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

WHEREAS, despite the failure of the United States to proscribe sex-selection abortion, the United States Congress has expressed repeatedly, through Congressional resolution, strong condemnation of policies promoting sex-selection abortion in the "Communist Government of China." Likewise, at the 2007 United Nation's Annual Meeting of the Commission on the Status of Women, 51st Session, the United States' delegation spearheaded a resolution calling on countries to eliminate sex-selective abortion, a policy directly contradictory to the permissiveness of current United States' law, which places no restriction on the practice of sex-selection abortion. The United Nations Commission on the Status of Women has urged governments of all nations "to take necessary measures to prevent . . . prenatal

sex selection," and

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

WHEREAS, countries with longstanding experience with sex-selection abortion—such as the Republic of India, the United Kingdom, and the People's Republic of China—have enacted complete bans on sex-selection abortion, and have steadily continued to strengthen prohibitions and penalties. The United States, by contrast, has no law in place to restrict sex-selection abortion, establishing the United States as affording less protection from sex-based infanticide than the Republic of India or the People's Republic of China, whose recent practices of sex-selection abortion were vehemently and repeatedly condemned by United States congressional resolutions and by the United States' Ambassador to the Commission on the Status of Women. Public statements from within the medical community reveal that citizens of other countries come to the United States for sex-selection procedures that would be criminal in their country of origin. Because the United States permits abortion on the basis of sex, the United States may effectively function as a "safe haven" for those who seek to have American physicians do what would otherwise be criminal in their home countries—a sex-selection abortion, most likely late-term, and

WHEREAS, the American medical community opposes sex-

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

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

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

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

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

WHEREAS, United Sates law prohibits the dissimilar treatment of persons of different races who are similarly situated. United States law prohibits discrimination on the basis of race in various contexts, including the provision of

employment, education, housing, health insurance coverage, and athletics, and

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

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

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

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

WHEREAS, the history of the United States includes examples of both sex discrimination and race discrimination. The people of the United States ultimately responded in the strongest possible legal terms by enacting constitutional amendments correcting elements of such discrimination. Women, once subjected to sex discrimination that denied them the right to vote, now have suffrage guaranteed by the Nineteenth Amendment to the United States Constitution. African-Americans, once subjected to race discrimination through slavery that denied them equal protection of the laws, now have that right guaranteed by the Fourteenth Amendment to the United States Constitution. The elimination of discriminatory practices has

been and is among the highest priorities and greatest achievements of American history, and

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

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

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

Section 2. The Legislature declares that there is no place for discrimination and inequality in human society in the form of abortions 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 knowledge that the pregnancy is being terminated because of the child's sex or race.

(6) SEX AND RACE SELECTION.—

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

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

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

3. Solicit or accept moneys to finance a sex-selection or

race-selection termination of pregnancy.

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

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

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

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

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

(a) Any person who willfully performs, or actively

participates in, a termination of pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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