

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1327 Abortion

**SPONSOR(S):** Plakon

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	9 Y, 5 N	Mathieson	Schoolfield
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 1327 creates the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.” The bill provides whereas clauses and legislative intent, and:

- Requires a physician performing a termination of pregnancy complete an affidavit attesting that the termination is not sought to select the sex or race of the fetus.
- Prohibits a person from knowingly performing such an act, intimidate or threaten someone to commit such an act, or finance or solicit moneys for such an act.
- Authorizes the Attorney General or state attorney to file in circuit court to enjoin certain acts.
- Creates a civil cause of action for recovery for the married father of the child, or maternal grandparents if the woman is younger than 18 years old.
- Creates a fine of up to \$10,000 for certain healthcare practitioners for failing to report a termination based on the sex or race of the fetus.

The bill appears to have no fiscal impact on the state.

The bill provides an effective date of October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Sex and Race Selective Abortion

The issue of termination of pregnancy based on the sex or race of the fetus has generated international controversy. Most notably over centralized population control measures in China and social customs in India.<sup>1</sup> Critics of the Chinese population control measures suggest that these may be the cause of an emerging gender imbalance, in favor of male children.<sup>2</sup> In India, researchers have observed what is described as a “son preference,” over daughters because of socio-economic concerns.<sup>3</sup> In response to these issues, both China and India have enacted legislative measures that proscribe discovery of the sex of the fetus, in certain circumstances.<sup>4</sup>

In Europe, legislation has been enacted by the United Kingdom to prevent termination of a fetus solely based on sex.<sup>5</sup>

In the United States, there is no federal prohibition on a termination of pregnancy that is sought for the sole purpose of sex or race of the fetus. At the time of publication, there is a measure before the U.S. House of Representatives, introduced by Rep. Trent Franks of the Second District of Arizona.<sup>6</sup>

Currently, there are four states in the Union that prohibit a termination of pregnancy based on the sex of the fetus. This is done in Arizona,<sup>7</sup> Oklahoma,<sup>8</sup> Illinois,<sup>9</sup> and Pennsylvania.<sup>10</sup> Of the four states that prohibit sex-selective terminations, only Arizona prohibits race-selective terminations.<sup>11</sup>

---

<sup>1</sup> See, Amartya Sen, *More than 100 Million Women are Missing*, N.Y REV. BOOKS, (December 1990) (Sen bases the number of 100 million on the difference in gender ratios of live births in China); Amartya Sen, *Missing Women – Revisited*, 327 BMJ 1237 (2003) (in 2003, Sen revisited the issue, observing that there had been an improvement in girl-child mortality, however, the impact of sex-selective abortions still meant that there was a disparity in gender ratios); Arindam Nandi and Anil Deolalikar, *Does a Legal Ban on Sex-Selective Abortion Improve Child Sex Ratios? Evidence from a Policy Change in India*, (University of California, Riverside Economics Department Working Paper, April, 2011) available at <http://economics.ucr.edu/2011.html> (Noting that in the absence of Indian legislation, the gender imbalance may have been more significant).

<sup>2</sup> David Smolin, *The Missing Girls of China: Population, Policy, Gender, Abortion, Abandonment, and Adoption in East-Asian Perspective*, 41 CUMB. L. REV. 1, (2010-2011).

<sup>3</sup> See, Sunita Puri, Vicanne Adams, Susan Ivey, and Robert Nachtgall, “There is such a thing as too many daughters, but not too many sons:” *A Qualitative Study of Son Preference and Fetal Sex Selection among Indian Immigrants in the United States*, 71 SOC. SCI & MED., 1169 at 1170-1172 (April, 2011); Prabhat Jha, Rajesh Kumar, Priya Vasa, Neeraj Dhringa, Deva Thiruchelvam, and Rahim Moineddin, *Low Male-to-Female Sex Ratio of Children Born in India: National Survey of 1.1 Million Households*, 367 LANCET 211, (January, 2006) (noting that prenatal sex determination followed by sex selective termination was the most likely explanation for the gender imbalance in Indian birth rates).

<sup>4</sup> In 1994, India enacted The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, No. 57, Acts of Parliament, 1994. At the time of publication, it has not been possible to locate a primary source of Chinese law, however, the Stipulation on Forbidding Non-medical Aided Fetus Sex Determination and Sex Selective Abortion from 2004, is cited in Smolin, *supra* note 11 at footnote 21.

<sup>5</sup> Human Fertilisation and Embryology Act, 1990, 37 Eliz. II, c. 37, 1ZB(1)-(4)(b), sched. 2: United Kingdom.

<sup>6</sup> H.R. 3541, 112<sup>th</sup> Cong. (2012). At the time of publication, Reps. Dennis Ross, Bill Posey and Jeff Miller from Florida are amongst the co-sponsors in the House. Similar measures were introduced in the 111<sup>th</sup> Congress (H.R. 1822, 111<sup>th</sup> Cong. (2009) but did not make it out of committee) and, the 110<sup>th</sup> Congress (H.R. 7016, 110<sup>th</sup> Cong. (2008) but did not make it out of committee).

<sup>7</sup> ARIZ. REV. STAT. ANN. s. 13-3603.2 (2011). At the time of publication, there has been no litigation challenging the validity of this section of Arizona law.

<sup>8</sup> OKLA. STAT. tit. 63, s. 1-731.2 (2011). At the time of publication, there has been no litigation challenging the validity of this section of Oklahoma law.

<sup>9</sup> 720 ILL. COMP. STAT. 510/6-8 (2011). At the time of publication, there has been no litigation challenging the validity of this prohibition in Illinois law.

<sup>10</sup> 18 PA. CONS. STAT. s. 3204(c), (2011). At the time of publication, there has been no litigation challenging the validity of this prohibition in Pennsylvania law.

<sup>11</sup> ARIZ. REV. STAT. ANN. s. 13-3603.2 (2012).

There is some research suggesting that this may be a situation that might occur in the United States.<sup>12</sup> The research suggests that this may occur amongst families who have recently migrated.<sup>13</sup>

In Florida law, there is currently no explicit prohibition on a termination of pregnancy that is sought for the sole purpose of selecting the sex or race of the fetus.<sup>14</sup>

### **Effect of Proposed Changes**

House Bill 1327 creates the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.” The bill contains 22 whereas clauses. The bill also contains a statement of legislative intent, providing that the purpose of this act is to protect unborn children from pre-natal discrimination.

The bill creates a new subsection in s. 390.0111, F.S., called “Sex and Race Selection.” The bill provides that a person may not knowingly:

- Perform or induce a termination of pregnancy that is based on the sex or race of the fetus;
- Use force or the threat of force to injure or intentionally intimidate any person for the purpose of obtaining a termination based on the sex or the race of the fetus; or
- Solicit or accept moneys to finance a termination based on the sex or the race of the fetus.

The bill amends s. 390.011, F.S., requiring that a physician may not terminate a pregnancy, without first completing an affidavit stating the termination not being performed because of the fetal sex or race, and that there is no knowledge of such a motivation.

The bill provides that a physician, physician’s assistant, nurse, counselor or other medical or mental health professional who knowingly fails to report violations of this subsection to law enforcement is subject to a fine of not more than \$10,000.

The bill creates a cause of action in circuit court for the Attorney General or state attorney to enjoin such an activity.

Further, the bill provides that a civil cause of action may be brought on behalf of the unborn child by the father who is married to the woman upon whom a sex or race selective termination was performed; or Maternal grandparents, if the woman upon whom a sex or race selective termination was performed, had not attained the age of 18. The court is authorized to award attorneys fees as costs in such an action. The bill defines appropriate relief to include monetary damages for all injuries, including psychological, physical and financial. The bill defines financial to include loss of companionship and support.

### **B. SECTION DIRECTORY:**

- Section 1:** Creates an unnumbered section of law, designating the “Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination and Equal Opportunity for Life Act.”
- Section 2:** Creates an unnumbered section of law related to legislative findings.
- Section 3:** Amends s. 390.0111, F.S., relating to the termination of pregnancies.
- Section 4:** Provides an effective date of October 1, 2012.

---

<sup>12</sup> See Puri, et al, *supra*, note 3, (Researchers interviewed 65 recent immigrants in CA, NJ and NY, and suggest that 89% of respondents terminated based on the sex of the fetus. It should also be noted that 58% of respondents had an education level of high school or less); Douglas Almond and Lena Edlund, *Son-Biased Sex Ratios in the 2000 United States Census*, 105 PNAS 5681, (April, 2008) (Researchers compared white, Chinese, Korean and Asian Indian birth rates at the first, second and third child, finding that for second and third children in Chinese, Korean and Asian Indian families, there appears to be a son preference – they interpreted this be as a result of prenatal sex-selection);

<sup>13</sup> See, Puri et al, *supra* note 3, at 1170 (claiming that there may be a correlation between access to technology in the United States that they did not have access to in India, because of prohibitions, and the sex-selective termination).

<sup>14</sup> See ch. 390, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

This bill may implicate Art. I, s. 23 of the Florida Constitution, which provides for an express right to privacy. Whilst the Florida Supreme Court recognized the State's compelling interest in regulating termination post-viability in *In re T.W.*, 551 So. 2d 1186 (1989), the issue of regulating termination as it pertains to the sex or race of the fetus is a novel question for the Florida and United States Supreme Courts.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 33-219 contain whereas clauses, the accuracy of which cannot be verified.

Line 254 uses a mens rea standard of "knowingly" for the enumerated actions, so the use of "knowing" on line 255 is superfluous. However, line 258 uses a conflicting mens rea standard of "intentionally."

Line 263 creates a cause of action for the state attorney to enjoin certain acts, however, does not specify which state attorney.

Lines 279-280 could be clarified by a reference to “healthcare practitioner” as defined by s. 456.001(4), F.S.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**