

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1332

To amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2005

Mr. SENSENBRENNER (for himself, Mr. WELDON of Florida, Mr. DELAY, Mr. CHABOT, Mr. FEENEY, Mr. JENKINS, Mr. CANNON, Mr. KING of Iowa, Mr. BACHUS, Mr. FRANKS of Arizona, Mr. HOSTETTLER, Mr. KELLER, Mr. DANIEL E. LUNGREN of California, and Mr. PENCE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, 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 “Protection of Incapaci-  
5 tated Persons Act of 2005”.

1 **SEC. 2. REMOVAL OF CERTAIN CASES TO FEDERAL COURT**  
2 **TO PROTECT THE RIGHTS OF INCAPACI-**  
3 **TATED PERSONS.**

4 (a) **RIGHT OF REMOVAL.**—Chapter 89 of title 28,  
5 United States Code, is amended by adding at the end the  
6 following:

7 **“§ 1453. Protection of rights of incapacitated persons**

8 “(a) Notwithstanding any other provision of this  
9 chapter, not later than 30 days after all State remedies  
10 have been exhausted, an incapacitated person, or the next  
11 friend of an incapacitated person, may remove any claim  
12 or cause of action described in subsection (b) to the United  
13 States district court for the district in which the claim  
14 or cause of action arose, or was heard.

15 “(b) The claim or cause of action referred to in sub-  
16 section (a) is one in which the State court authorizes or  
17 directs the withholding or withdrawal of food or fluids or  
18 medical treatment necessary to sustain the incapacitated  
19 person’s life, but does not include a claim or cause of ac-  
20 tion in which no party disputes, and the court finds, that  
21 the incapacitated person, while having capacity, had exe-  
22 cuted a written advance directive valid under applicable  
23 law that clearly authorized the withholding or withdrawal  
24 of food or fluids or medical treatment in the applicable  
25 circumstances.

1       “(c) In hearing and determining a claim or cause of  
2 action removed under this section, the court shall only  
3 consider whether authorizing or directing the withholding  
4 or withdrawal of food or fluids or medical treatment nec-  
5 essary to sustain the incapacitated person’s life constitutes  
6 a deprivation of any right, privilege, or immunity secured  
7 by the Constitution or laws of the United States.

8       “(d) The United States district court shall determine  
9 de novo any claim considered under subsection (c), and  
10 no bar or limitation based on abstention, res judicata, col-  
11 lateral estoppel, procedural default, or any other doctrine  
12 of issue or claim preclusion shall apply.

13       “(e) As used in this section—

14               “(1) the term ‘incapacitated person’ means an  
15 individual who is presently incapable of making rel-  
16 evant decisions concerning the provision, with-  
17 holding, or withdrawal of food, fluids or medical  
18 treatment under applicable law; and

19               “(2) the term ‘next friend’ includes a parent.”.

20       (b) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of chapter 89 of title 28, United States  
22 Code, is amended by adding at the end the following new  
23 item:

“1453. Protection of rights of incapacitated persons.”.