

109TH CONGRESS
1ST SESSION

H. R. 1332

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2005

Received

MARCH 20, 2005

Read twice and referred to the Committee on the Judiciary

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protection of Incapaci-
3 tated Persons Act of 2005”.

4 **SEC. 2. REMOVAL OF CERTAIN CASES TO FEDERAL COURT**
5 **TO PROTECT THE RIGHTS OF INCAPACI-**
6 **TATED PERSONS.**

7 (a) RIGHT OF REMOVAL.—Chapter 89 of title 28,
8 United States Code, is amended by adding at the end the
9 following:

10 **“§ 1453. Protection of rights of incapacitated persons**

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

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

1 of food or fluids or medical treatment in the applicable
2 circumstances.

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

10 “(d) The United States district court shall determine
11 de novo any claim or cause of action considered under sub-
12 section (c), and no bar or limitation based on abstention,
13 res judicata, collateral estoppel, procedural default, or any
14 other doctrine of issue or claim preclusion shall apply.

15 “(e) As used in this section—

16 “(1) the term ‘incapacitated person’ means a
17 born individual who is presently incapable of making
18 relevant decisions concerning the provision, with-
19 holding, or withdrawal of food, fluids or medical
20 treatment under applicable law; and

21 “(2) the term ‘next friend’ means an individual
22 who has some significant relationship with the real
23 party in interest, and includes a parent.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 89 of title 28, United States

- 1 Code, is amended by adding at the end the following new
- 2 item:

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

Passed the House of Representatives March 16,
2005.

Attest:

JEFF TRANDAHL,
Clerk.