109TH CONGRESS  1ST 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.

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBERN (for himself and Mr. WELDON of Florida) introduced the following bill; which was referred to the Committee on

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”.
SEC. 2. REMOVAL OF CERTAIN CASES TO FEDERAL COURT

TO PROTECT THE RIGHTS OF INCAPACITATED PERSONS.

(a) Right of Removal.—Chapter 89 of title 28, United States Code, is amended by adding at the end the following:

“§ 1453. Protection of rights of incapacitated persons

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

“(b) The claim or cause of action referred to in subsection (a) is one in which the State court authorizes or directs the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person’s life, but does not include a claim or cause of action in which no party disputes, and the court finds, that the incapacitated person, while having capacity, had executed a written advance directive valid under applicable law that clearly authorized the withholding or withdrawal of food or fluids or medical treatment in the applicable circumstances.
“(c) In hearing and determining a claim or cause of action removed under this section, the court shall only consider whether authorizing or directing the withholding or withdrawal of food or fluids or medical treatment necessary to sustain the incapacitated person’s life constitutes a deprivation of any right, privilege, or immunity secured by the Constitution or laws of the United States.

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

“(e) As used in this section—

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

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

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

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