

[DISCUSSION DRAFT]

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

**H. R.** \_\_\_\_\_

To protect the rights of legally incompetent adults who are the subject  
of a legal guardianship or conservatorship.

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IN THE HOUSE OF REPRESENTATIVES

Mr. CRIST introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

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**A BILL**

To protect the rights of legally incompetent adults who are  
the subject of a legal guardianship or conservatorship.

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 “Freedom and Right  
5 to Emancipate from Exploitation (FREE) Act”.

1 **SEC. 2. GRANTS TO STATES FOR STATE-EMPLOYED CASE-**  
2 **WORKERS AND LEGAL GUARDIANS AND CON-**  
3 **SERVATORS FOR LEGALLY INCOMPETENT**  
4 **ADULTS.**

5 (a) IN GENERAL.—The Secretary may make grants  
6 to eligible States, in accordance with this section, for the  
7 provision of State-employed caseworkers, legal guardians,  
8 and conservators for legally incompetent adults.

9 (b) ELIGIBILITY.—A State is eligible for a grant  
10 under this section if the Secretary determines that—

11 (1) the State maintains an up-to-date database  
12 of all legal guardianships and conservatorships that  
13 have been established for legally incompetent adults  
14 under State law;

15 (2) State law requires a caseworker who is a  
16 State employee to be appointed for each individual  
17 who is the subject of such a guardianship or con-  
18 servatorship, and to be empowered, notwithstanding  
19 any objection of the legal guardian of, or conservator  
20 for, the individual, to communicate with the indi-  
21 vidual, and to assist the individual in petitioning a  
22 court to replace the legal guardian or conservator, as  
23 the case may be, with a legal guardian or conser-  
24 vator who is such an employee;

25 (3) State law guarantees that, notwithstanding  
26 any such guardianship or conservatorship, such an

1 individual retains the right to communicate with  
2 such a caseworker, and to petition a court as de-  
3 scribed in paragraph (2); and

4 (4) State law requires any State employee re-  
5 ferred to in paragraph (2) to meet such financial  
6 disclosure requirements as the State may establish.

7 (c) GRANT AMOUNTS.—

8 (1) IN GENERAL.—The amount of the grant to  
9 be made to a State under this section is the State  
10 share of the amount made available to carry out this  
11 section.

12 (2) STATE SHARE.—For purposes of paragraph  
13 (1), the State share is the total number of legally in-  
14 competent adults in the State who are under a legal  
15 guardianship or conservatorship divided by the total  
16 number of such adults in all States.

17 (d) USE OF GRANT.—A State to which a grant is  
18 made under this section shall use the grant only to pay  
19 the salaries of State employees who are serving as case-  
20 workers for, legal guardians of, or conservators for legally  
21 incompetent adults, and to cover related administrative ex-  
22 penses.

23 (e) ANNUAL REPORTS.—Within 90 days after the  
24 end of any fiscal year in which a grant is made to a State

1 under this section, the State shall submit to the Congress  
2 a written report that specifies—

3 (1) how the funds were used;

4 (2) the number of adults under legal guardian-  
5 ship or conservatorship in the State as of the end of  
6 the fiscal year;

7 (3) the number of petitions described in sub-  
8 section (b)(2) that were submitted to the courts of  
9 the State in the fiscal year;

10 (4) the ratio of the number of individuals under  
11 legal guardianship or conservatorship in the State  
12 during the fiscal year to the number of State-em-  
13 ployed legal guardians of, or conservators for, the in-  
14 dividuals; and

15 (5) the number of individuals in the State who  
16 were emancipated from a legal guardianship or con-  
17 servatorship during the fiscal year.

18 (f) LIMITATIONS ON AUTHORIZATION OF APPROPRIA-  
19 TIONS.—

20 (1) IN GENERAL.—For grants under this sec-  
21 tion, there are authorized to be appropriated to the  
22 Secretary not more than \$260,000,000, of which—

23 (A) \$160,000,000 shall be for States to  
24 hire caseworkers for legally incompetent adults  
25 pursuant to this section; and

1 (B) \$100,000,000 shall be for States to  
2 hire legal guardians of, or conservators for, le-  
3 gally incompetent adults pursuant to this sec-  
4 tion.

5 (2) AVAILABILITY.—The amounts made avail-  
6 able under paragraph (1) are authorized to remain  
7 available until expended.

8 (g) DEFINITIONS.—In this section:

9 (1) ADULT.—The term “adult” means a person  
10 who has attained 18 years of age and is not in foster  
11 care under the responsibility of a State.

12 (2) SECRETARY.—The term “Secretary” means  
13 the Secretary of Health and Human Services.

14 (3) STATE.—The term “State” means the 50  
15 States of the United States, the District of Colum-  
16 bia, the Commonwealth of Puerto Rico, the United  
17 States Virgin Islands, Guam, the Commonwealth of  
18 the Northern Mariana Islands, and American  
19 Samoa.

20 **SEC. 3. PROTECTION OF RIGHTS OF LEGALLY INCOM-**  
21 **PETENT ADULTS WHO ARE THE SUBJECT OF**  
22 **A LEGAL GUARDIANSHIP OR CONSERVATOR-**  
23 **SHIP.**

24 (a) FINDINGS.—The Congress finds as follows:

1           (1) In a November 15, 2019 article, entitled  
2           “Guardian stole more than \$500,000 from elderly  
3           Pinellas man”, the Tampa Bay Times reported on a  
4           private guardian who allegedly stole over \$500,000  
5           from a ward over 11 months.

6           (2) In an August 2, 2019 article, entitled  
7           “Florida professional guardian Rebecca Fierle: De-  
8           voted or dangerous?” the Orlando Sentinel reported  
9           on severe cases of alleged adult guardianship fraud  
10          and abuse perpetrated by a private guardian, includ-  
11          ing physical neglect, deliberate isolation of wards  
12          from their families, financial exploitation, and using  
13          “do not resuscitate” orders without permission.

14          (3) Private guardians are at risk for financial  
15          conflicts of interest, because a ward’s assets, which  
16          they usually control, are used to pay the guardian  
17          for their services.

18          (4) Many persons declared incapacitated by a  
19          judge and assigned to a private guardian have not  
20          even appeared in court.

21          (5) A person deemed incapacitated lacks the  
22          legal authority to petition to have their guardian re-  
23          moved or replaced if they believe they are being vic-  
24          timized.

1           (6) Pop icon Britney Spears has unsuccessfully  
2           petitioned the judicial system to remove her father  
3           as her conservator for years.

4           (7) Despite the fact that Ms. Spears has been  
5           a successful working artist for the past decade, her  
6           repeated requests to have her conservatorship re-  
7           moved have been denied.

8           (8) The 14th Amendment to the Constitution of  
9           the United States protects United States citizens  
10          and residents from being deprived of “life, liberty, or  
11          property, without due process of law”.

12          (9) The allegations in the Orlando Sentinel and  
13          Tampa Bay Times, along with the inability of  
14          Britney Spears to free herself from her father’s con-  
15          trol, indicate that State guardianship and con-  
16          servatorship systems can deprive a United States  
17          citizen or resident of liberty and property without  
18          due process.

19          (10) In order to restore due process guaranteed  
20          by the 14th Amendment to the Constitution of the  
21          United States, the Federal government must guar-  
22          antee that a United States citizen or resident placed  
23          under guardianship or conservatorship retains the  
24          right to petition to have their private guardian or

1 conservator replaced with a State guardian who is  
2 free from any financial conflict of interest.

3 (b) ESTABLISHMENT OF RIGHT.—An individual who  
4 is the subject of a legal guardianship or conservatorship  
5 established under State law has the right to—

6 (1) communicate with a caseworker referred to  
7 in section 2(b)(2), notwithstanding any objection of  
8 the legal guardian of, or conservator for, the indi-  
9 vidual; and

10 (2) petition a court to replace any person who  
11 is a legal guardian of, or conservator for, the indi-  
12 vidual and who is not an employee of the State with  
13 a legal guardian or conservator, as the case may be,  
14 who is an employee of the State or who the indi-  
15 vidual has designated in a notarized document  
16 signed by the individual to act as such, notwith-  
17 standing the terms of the guardianship or con-  
18 servatorship, as the case may be, and in any pro-  
19 ceeding on such a petition, the petitioner shall not  
20 be required to prove wrongdoing or malfeasance by  
21 the legal guardian or conservator, as the case may  
22 be, as a condition of having the petition granted.

23 (c) PRIVATE RIGHT OF ACTION.—An individual who  
24 is the subject of a legal guardianship or conservatorship  
25 established under State law may bring an action in any



1 United States district court to enforce any right provided  
2 by subsection (b). The court may provide the petitioner  
3 in such an action with such relief as the court deems ap-  
4 propriate.