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## SENATE BILL NO. 823

Offered January 13, 1999

*A BILL for the relief of Michele P. Finn.*

Patrons—Saslaw and Barry

Referred to Committee on Finance

Whereas, Hugh and Michele Finn resided with their two daughters in Louisville, Kentucky, where Mr. Finn was a television news anchor; and

Whereas, in 1995, Mr. Finn was in an automobile accident, which left him with severe brain damage caused by a trauma directly to the head and exacerbated by a severed aorta which deprived his brain of oxygen for a substantial period of time; and

Whereas, several years prior to his accident, after reporting a story involving the use of extraordinary artificial life support means to keep alive a person in a persistent vegetative state, Mr. Finn made it clear to his wife and others that he would never want to be kept artificially sustained, nor would he want his family to endure his being maintained in that manner; and

Whereas, shortly before the accident, Mr. Finn had expressed to his attorney and friend, Kenneth L. Sales, his wish not to be kept alive by extraordinary artificial life support means if he was in a persistent vegetative state and asked Mr. Sales to prepare a Medical Directive memorializing these wishes; and

Whereas, Mr. Finn was treated for many months in Louisville hospitals, until his doctors determined there was (i) no benefit to be gained from any further rehabilitation and (ii) no hope that his condition would improve to any substantial degree; and

Whereas, despite this, Michele Finn successfully lobbied their insurance carrier to pay for a second opinion at the Drucker Brain Damage Clinic at the renowned Moss Rehabilitation Hospital in Philadelphia; and

Whereas, Mr. Finn was transported to Philadelphia, where he remained for many more months, undergoing extensive examination and attempts at rehabilitation; and

Whereas, after almost a year of the best and most intensive medical treatment, Mr. Finn's condition remained unchanged, with no prospect of his recovering from his brain-damaged condition or interacting with his environment in any meaningful way; and

Whereas, seeing no benefit to be gained from further attempts at rehabilitation, Mr. Finn was moved to Annaburg Manor Nursing Home in Prince William County; and

Whereas, Michele Finn decided to bring her husband to Virginia in response to requests by his parents and some of his brothers that Hugh Finn be near them; and

Whereas, Tom Finn, Hugh Finn's father, spent between six and seven hours at his son's side every day for the next two and one-half years; and

Whereas, while Hugh Finn received excellent care as a Medicaid program patient at Annaburg Manor Nursing Home, his almost nonexistent cognitive state deteriorated further, and he remained totally incapable of responding to his environment; and

Whereas, throughout the period that Hugh Finn was at Annaburg Manor Nursing Home, Mrs. Finn and their children visited him frequently from Kentucky, though it was a very difficult ordeal; and

Whereas, in 1996 Michele Finn was appointed by the courts of the Commonwealth to serve as the guardian of Hugh Finn; and

Whereas, in June 1998, Hugh Finn's treating physicians advised Michele Finn that her husband was in a persistent vegetative state and that there was no reasonable possibility of recovery; and

Whereas, as a consequence of the doctor's diagnosis, Mrs. Finn arranged a meeting of the entire family and the physicians, at which the physicians reiterated their conclusions and she explained that she would carry out Hugh Finn's decision to cease the extraordinary life-sustaining measure of providing nutrition and hydration through a feeding tube; and

Whereas, before acting as her husband's guardian to remove his feeding tube, Mrs. Finn waited several weeks to allow relatives to pay their last respects to Hugh Finn, and in that interim period several relatives decided that they wanted him to continue on artificial life support, regardless of his condition; and

Whereas, relatives of Hugh Finn, through John Finn, filed suit in Prince William County Circuit Court seeking to remove Michele Finn as guardian so their wishes, as opposed to Hugh Finn's wishes, would be carried out; and

Whereas, the suit resulted in further medical review of Hugh Finn's condition and a plenary hearing

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60 on July 29, 1998, challenging the legal authority and propriety of the guardian's decision to remove an  
61 extraordinary life-prolonging support system providing artificially-administered nutrition and hydration to  
62 her husband; and

63 Whereas, at the hearing the three attending physicians testified before Judge Frank A. Hoss, Jr., as to  
64 their unanimous findings that Hugh Finn was conclusively in a persistent vegetative state from which he  
65 would not recover; and

66 Whereas, during the hearing Dr. John Collins Harvey, a Catholic physician and theologian, testified  
67 on the issue of whether the decision to withdraw artificial life support measures was in accordance with  
68 Mr. Finn's personal values and religious beliefs, and concluded that the view of the Roman Catholic  
69 Church was neither inconsistent with nor contrary to Hugh Finn's own desires; and

70 Whereas, the petitioners in the suit did not present any medical evidence at the July 29 hearing  
71 contradicting the diagnosis of the treating physicians; and

72 Whereas, on August 31, 1998, Judge Hoss entered an order finding that Hugh Finn was in a  
73 persistent vegetative state in which he was unable to interact with his environment and from which he  
74 would not recover; and

75 Whereas, pending the entry of a final order and the period for appeal, Governor James Gilmore was  
76 convinced to take independent action in this matter without the knowledge of Hugh Finn's guardian; and

77 Whereas, at the direction of the Governor, the State Health Department sent a physician to observe  
78 Hugh Finn and review the conditions at Annaburg Manor; and

79 Whereas, in an exit interview with the Nursing Home's administrator, the Health Department  
80 physician found that Mr. Finn was being well-maintained and that the diagnosis of the treating  
81 physicians was correct; and

82 Whereas, disappointed that the physician's report did not provide any basis for intervention in the  
83 case by the Commonwealth, the Gilmore administration then had the Department of Medical Assistance  
84 Services (DMAS) direct Marie F. Saul, a utilization review nurse, to inspect the medical records of  
85 Hugh Finn at Annaburg Manor and to observe his medical condition; and

86 Whereas, the observation of Mr. Finn's condition was outside of the scope of the utilization review  
87 nurse's normal duties, was done without the permission of his guardian, and contravened the guardian's  
88 express wishes that no one but family be allowed in to see Mr. Finn in order to protect his privacy and  
89 dignity; and

90 Whereas, after spending the entire morning of September 18, 1998, with Mr. Finn, the utilization  
91 review nurse made a report to DMAS, which ultimately had her provide an affidavit which contained  
92 her statement that she believed Mr. Finn may have said "hi" in response to her attempt to communicate  
93 with him; and

94 Whereas, the utilization review nurse's affidavit (i) states that this was the only putative decipherable  
95 sound from him in a several hour period during which she repeatedly tried to communicate with him,  
96 (ii) acknowledges that despite hearing him make a monosyllabic response on one occasion, she was  
97 unable to get him to respond verbally to any other overture despite repeated attempts to elicit a verbal  
98 response, and (iii) concludes that Mr. Finn was in a persistent vegetative state; and

99 Whereas, people in persistent vegetative states often appear to be superficially awake because they  
100 may open their eyes, make noises, and occasionally move reflexively; and

101 Whereas, the Office of the Attorney General provided a copy of the utilization review nurse's  
102 affidavit to the circuit court and to John Finn, thereby instigating him to file a petition for a re-hearing  
103 on September 21, 1998; and

104 Whereas, following a full hearing, the circuit court found that Ms. Saul's affidavit was not new  
105 evidence and that there was still no reliable evidence presented by the petitioner contradicting the  
106 diagnosis and prognosis of Hugh Finn's three treating physicians; and

107 Whereas, following the re-hearing, Michele Finn repeated her express orders not to allow anyone in  
108 to see Mr. Finn, except for family members, in order to stop the circus-like atmosphere that was  
109 enveloping Annaburg Manor and was disturbing its residents; and

110 Whereas, bogus complaints made by unknown persons to Adult Protective Services of the Prince  
111 William County Department of Social Services and other agencies necessitated daily investigations, all  
112 designed to intrude upon the guardian's decision to carry out Mr. Finn's wishes; and

113 Whereas, Michele Finn's attorneys filed a motion to prevent the Commonwealth's agents from  
114 trespassing into Hugh Finn's rooms at Annaburg Manor, which motion was the subject of a hearing on  
115 September 25, 1998; and

116 Whereas, at the hearing the Office of the Attorney General successfully argued that the  
117 Commonwealth should not be made a party to the original case because the circuit court no longer had  
118 jurisdiction in the matter; and

119 Whereas, contrary to its stated position that it should not be brought into the matter, the  
120 Commonwealth directed three more physicians from DMAS and the Department of Health to further  
121 examine Hugh Finn, without the permission of his guardian and without appropriate legal justification;

122 and

123 Whereas, after their clandestine examination, the three state physicians reported to the administrator  
124 of Annaburg Manor that Hugh Finn was being exceptionally well-maintained, that he was definitely in a  
125 persistent vegetative state, and that they probably would have removed the extraordinary life-prolonging  
126 feeding tube a year and a half earlier; and

127 Whereas, the three state physicians called in Ms. Saul, the utilization review nurse who authored the  
128 controversial affidavit, and rebuked her for ever making such a statement in a report when her findings,  
129 by her own admission, were unconfirmed and were meaningless insofar as how they pertained to Mr.  
130 Finn's medical condition; and

131 Whereas, the parents and siblings of Hugh Finn reconciled their differences of opinion and on  
132 September 28, 1998, agreed, through counsel, that they would no longer challenge the guardian's  
133 decision and would support carrying out Hugh Finn's express wishes; and

134 Whereas, after Hugh Finn's relatives decided not to appeal the decision of the circuit court that he  
135 was in a persistent vegetative state in which he was unable to interact with his environment and from  
136 which he would not recover, and despite the Commonwealth's own physicians' concurrence with Hugh  
137 Finn's physicians' opinion regarding his condition, on September 30, 1998, Governor Gilmore filed suit  
138 against Michele Finn, Annaburg Manor Nursing Home, and Dr. Robin Merlino; and

139 Whereas, the Governor claimed authority to intervene in this matter in his capacity as *parens patrie*  
140 on grounds that existing legal procedures failed to adequately protect existing legal rights and interests  
141 of citizens; and

142 Whereas, an emergency hearing in the case of *Gilmore and the Commonwealth of Virginia v.*  
143 *Annaburg Manor Nursing Home, et al.*, was held at midnight on September 30, 1998; and

144 Whereas, in the course of the hearing William Hurd, Senior Counsel to the Attorney General, in  
145 response to Judge Hoss' query whether there was any new evidence, said that the Governor was relying  
146 on the affidavit of the utilization review nurse; and

147 Whereas, Mr. Hurd did not advise the court that there was indeed new evidence in the form of the  
148 conclusions made just days previously by the state's own physicians that Mr. Finn's physicians were  
149 correct in their findings that he was in a persistent vegetative state; and

150 Whereas, the affidavit of the state's neurologist, Dr. Naurang S. Gill, also stated that additional  
151 medical tests would serve no purpose, thus demonstrating that the Commonwealth had no basis for  
152 challenging the court's prior ruling; and

153 Whereas, by not revealing this report to the circuit court after being asked if new evidence existed,  
154 the Governor and his counsel deliberately attempted to mislead Judge Hoss as to the facts of the case;  
155 and

156 Whereas, after Judge Hoss ruled against the Governor, he immediately appealed to the Virginia  
157 Supreme Court, which unanimously rejected the Governor's appeal less than three hours after it was  
158 filed; and

159 Whereas, on October 1, 1998, the feeding tube was withdrawn, and eight days later Hugh Finn died;  
160 and

161 Whereas, within hours after Mr. Finn's death, his body was secretly seized in order for the State  
162 Medical Examiner to conduct an autopsy, and Michele Finn was forced to file suit seeking an injunction  
163 to require the Commonwealth to return the body; and

164 Whereas, § 54.1-2982 of the Code of Virginia specifically defines a persistent vegetative state as a  
165 condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness,  
166 with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other  
167 than reflex activity of muscles and nerves for low level conditioned response, and from which, to a  
168 reasonable degree of medical probability, there can be no recovery, and the Health Care Decisions Act  
169 (§ 54.1-2981 et seq.) expressly authorizes competent adults to direct the withdrawal of hydration and  
170 nutrition in the event such person is in a persistent vegetative state; and

171 Whereas, in the foregoing legal proceedings in Prince William County Circuit Court, Judge Hoss  
172 appointed Elizabeth von Keller, an attorney, as Hugh Finn's guardian ad litem to independently review  
173 and protect Mr. Finn's interests, and Ms. Keller concurred with Michele Finn's actions throughout the  
174 proceedings on grounds that they were mandated by the law and evidence; and

175 Whereas, it has been conclusively demonstrated, and has never been contradicted in any believable  
176 manner, that Hugh Finn, through his own express wishes, did not want to be maintained in a persistent  
177 vegetative state, and thus it became the duty of his guardian to carry out Mr. Finn's desires; and

178 Whereas, Michele Finn was put through six hearings and four lawsuits in a two-month period,  
179 unfairly taxing her and her two daughters with enormous expenses defending frivolous and baseless  
180 legal proceedings either brought directly or instigated by Governor Gilmore and agencies of the  
181 Commonwealth; and

182 Whereas, on October 30, 1998, Michele Finn filed a motion in circuit court seeking reimbursement

183 from the Governor, the Attorney General, and three assistants of more than \$40,000 in attorneys fees  
184 and costs, together with other sanctions as the court deems appropriate, including payment to the  
185 guardian ad litem for her services; and

186 Whereas, on November 25, 1998, Judge Hoss ruled that (i) the state's proceeding violated legal  
187 prohibitions on frivolous lawsuits and (ii) the Commonwealth must reimburse Michele Finn for \$13,000  
188 in attorneys' fees and costs, in addition to paying \$2,731 to the attorney ad litem; and

189 Whereas, no excuse will ever justify the emotional and financial toll inflicted upon Michele Finn and  
190 her family from this horrific abuse of the government's power; and

191 Whereas, Mrs. Finn remains uncompensated for the balance of the legal fees and costs she has  
192 incurred in defending herself in these legal actions, and has not been compensated for other expenses  
193 and damages incurred as the result of the actions of the Governor and other officials of the  
194 Commonwealth; and

195 Whereas, Michele P. Finn has no other means to obtain adequate relief except by action of this body;  
196 now, therefore,

197 **Be it enacted by the General Assembly of Virginia:**

198 *1. § 1. That there is hereby appropriated from the general fund of the state treasury the amount of*  
199 *\$48,000 to be paid by check issued by the State Treasurer on warrant of the Comptroller to Michele P.*  
200 *Finn, upon execution by her of a release of all claims she may have against the Commonwealth or any*  
201 *of its political subdivisions or their officers, employees, or agents in connection with the aforesaid*  
202 *occurrence.*