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HOUSE BILL NO. 1722

Offered January 8, 1997

A BILL for the relief of Gregory W. Ulmer and Diane A. Ulmer.

Patron—Cranwell

Referred to Committee on Claims

Whereas, Gregory W. Ulmer and Diane A. Ulmer and their son, Brian Andrew Ulmer, reside in the Town of Blue Ridge in Botetourt County, Virginia; and

Whereas, in the course of his birth on October 25, 1993, Brian Ulmer was deprived of an adequate supply of oxygen; and

Whereas, as a result of the oxygen deprivation during birth, Brian Ulmer suffers from cerebral palsy and is permanently physically and mentally disabled; and

Whereas, Gregory and Diane Ulmer filed a claim on Brian's behalf with the Virginia Workers' Compensation Commission under the Virginia Birth-Related Neurological Injury Compensation Act; and

Whereas, the Commission has determined that Brian's injury was a birth-related neurological injury, and ruled that the Ulmers were entitled to compensation from the Birth-Related Neurological Injury Compensation Fund; and

Whereas, the Commission's award provides the Ulmers with compensation for the (i) actual medically necessary and reasonable expenses of medical and hospital, rehabilitative, residential and custodial care and service; special equipment or facilities; and related travel, to be paid as the expenses are incurred, (ii) loss of earnings beginning on Brian's eighteenth birthday, and (iii) reasonable expenses incurred in connection with filing their claim; and

Whereas, the board of directors of the Birth-Related Neurological Injury Compensation Program has acknowledged that the Ulmers' residence cannot be modified in a manner to accommodate Brian's physical disabilities; and

Whereas, on September 15, 1995, the board of directors of the Program provided the Ulmers with the option of either (i) receiving a \$100,000 cash grant to be used to acquire or construct an appropriate replacement residence, and pay the costs of outfitting the replacement residence to accommodate Brian's physical disabilities or (ii) accepting a residence to be owned by the Program and occupied by the Ulmers during the term of a trust agreement to expire upon the death or institutionalization of Brian Ulmer; and

Whereas, the option of having the Program provide a residence for the Ulmers' use in trust is not feasible because of associated adverse income tax consequences; and

Whereas, the Ulmers selected the \$100,000 cash grant option; and

Whereas, in September 1995, the Ulmers began marketing their current residence with the objective of applying their accumulated equity in the residence, together with the money provided by the Program, to acquire a replacement residence; and

Whereas, the Ulmers forwarded plans for a replacement residence to the Program, which plans were approved subject to minor changes; and

Whereas, in April 1996, with \$55,000 of the \$100,000 available from the Program, the Ulmers purchased a lot for the construction of a replacement residence at 5240 Dresden Lane in Botetourt County; and

Whereas, the Ulmers' current residence has been actively marketed without success since September 1995; and the Ulmers are unable to construct a replacement residence on the new lot until they have sold their current residence; and

Whereas, pursuant to subsection F of § 38.2-5016 of the Code of Virginia, the board of directors of the Program has the power, in the course of administering the Fund, to purchase, hold, sell or transfer real property; and

Whereas, in April 1996 the Ulmers requested that the board of directors of the Program either (i) purchase their current residence for \$188,000; (ii) make monthly payments on the mortgage on their current residence until it is sold; (iii) make them an interest-free loan of \$100,000, to be due upon the sale of their current residence; or (iv) construct the new residence with repayment (less the \$55,000 for the lot purchase and the cost of modifying the replacement residence to accommodate Brian's physical disabilities) being made by the Ulmers from the proceeds of the sale of their current residence, and the board has refused all such requests; and

Whereas, by letter dated July 22, 1996, the Ulmers requested the board to pay to them, among other expenses, \$47,500, such sum being the difference between the assessed value of the current residence

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60 (\$187,500) and the price at which the residence could be sold to a wholesale real estate firm (\$140,000),
61 and the board rejected this proposal on August 15, 1996; and

62 Whereas, until this issue is resolved, the Ulmers continue to (i) carry Brian up and down two flights
63 of stairs, thereby incurring risk of injury, (ii) pay the costs of marketing their current residence, (iii) pay
64 for maintenance and taxes on their new lot; and (iv) suffer emotional distress and uncertainty; and

65 Whereas, the board, by refusing to accept any of the options proposed by the Ulmers, is denying
66 Brian a residence that accommodates his physical disabilities in violation of the Commission's award of
67 necessary and reasonable expenses for special equipment and facilities; and

68 Whereas, Gregory W. Ulmer and Diane A. Ulmer have no other means to obtain adequate relief
69 except by action of this body; now, therefore,

70 Be it enacted by the General Assembly of Virginia:

71 *1. § 1. That the Birth-Related Neurological Injury Compensation Program shall purchase, with funds in*
72 *the Birth-Related Neurological Injury Compensation Fund, from Gregory W. Ulmer and Diane A. Ulmer*
73 *their property located at 175 Stonehaven Lane in Blue Ridge, Virginia, within sixty days following the*
74 *effective date of this act, if such property has not been sold by Gregory W. Ulmer and Diane A. Ulmer*
75 *by such date. The gross sales price for such property shall be \$188,000. The net proceeds of the sale*
76 *available to Gregory W. Ulmer and Diane A. Ulmer shall be applied to the costs of constructing a*
77 *residence for the Ulmers that accommodates the physical disabilities of Brian Ulmer, on the Ulmers' lot*
78 *at 5240 Dresden Lane in Botetourt County. The Birth-Related Neurological Injury Compensation*
79 *Program may, following the acquisition of the Ulmers' current residence, dispose of such property for*
80 *such price and upon such terms as it deems appropriate, and the net proceeds from such disposition*
81 *shall be deposited in the Birth-Related Neurological Injury Compensation Fund.*