

AN ACT

ENTITLED, An Act to revise the calculation of disability benefits and certain benefits payable upon death of members of the South Dakota Retirement System.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) since the member's most recent entry into active status and prior to becoming disabled, or was disabled by accidental means while performing usual duties for an employer, is eligible for disability benefits if the disability is expected to be of long, continued, and indefinite duration of at least one year and the member is disabled on the date the member's contributory service ends. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status. The provisions of this section apply to any member whose application for disability benefits is received by the system after June 30, 2015.

Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

Any member seeking disability benefits pursuant to section 1 of this Act shall submit an application to the administrator. Any information required for a complete application must be received within one year after the application for disability benefits was received. If the required information is not received by the system within one year after the application is received, the member may reapply.

Any member, who fails to file an application for disability benefits with the administrator within three years after the date on which the member's contributory service ends, forfeits all rights to

disability benefits.

Section 3. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

No application for disability benefits pursuant to section 1 of this Act may be determined until the member's employer has certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or employment in a comparable level position.

Section 4. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

No application for disability benefits pursuant to section 1 of this Act may be determined until a health care provider has certified to the system that the employee has a disability.

Section 5. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt of an application for disability benefits after June 30, 2015, along with statements from a health care provider and the member's employer, the administrator shall determine whether the member is eligible for disability benefits. The administrator may request the advice of the disability advisory committee with respect to any application. The recommendation of the disability advisory committee is not binding on the administrator. The disability advisory committee or the administrator may require an independent medical examination of the member to be conducted by a disinterested health care provider selected by the disability advisory committee or the administrator to evaluate the member's condition. The disability advisory committee or the administrator may require a functional capacity assessment of the member to be conducted by a licensed professional qualified to administer such assessments, and the assessment may be used to evaluate the member's qualification for benefits. Refusal to undergo an examination or assessment pursuant to this section is cause for denying the application.

If the administrator determines that the member is not disabled, a notice of the administrator's

determination and the reasons for the determination shall be sent, certified mail, to the member's last known address.

Section 6. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If the administrator determines that the member whose application was received pursuant to section 5 of this Act, meets the qualifications to receive disability benefits, a notice of the administrator's determination shall be sent, certified mail, to the member's last known address. A member whose application for disability benefits is approved shall receive the benefits beginning with the month following the date on which the member's contributory service terminates. If any member fails to terminate contributory service within one year after receiving notice that the member's application has been approved, the member's application approval expires.

Section 7. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

The disability benefit approved pursuant to section 6 of this Act is the greater of the following calculations:

- (1) Twenty-five percent of the member's final average compensation at the date of disability;
- or
- (2) The member's unreduced accrued retirement benefit at the date of disability.

The disability benefit shall be paid in monthly installments for the life of the member unless the benefit terminates pursuant to section 11 of this Act.

For purposes of determining the eligibility of a surviving spouse benefit, the disability benefit is considered a retirement benefit when the member attains the age of sixty-five.

Section 8. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

No member may receive credited service for the period during which the member receives disability benefits pursuant to section 7 of this Act.

Section 9. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If a member receiving disability benefits pursuant to section 7 of this Act becomes employed by a participating unit, the member and employer shall make active contributions pursuant to § 3-12-71 during the period of the employment. The contributions required of the member pursuant to § 3-12-71 shall be deposited by the member's employer with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by § 457 of the Internal Revenue Code. Notwithstanding the provisions of § 3-12-71, the contributions required of the member's employer pursuant to § 3-12-71 shall be deposited into the member trust fund created by chapter 3-12, but without any association with or credit to the member.

Section 10. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

A member's disability benefits pursuant to section 7 of this Act terminate if the member is no longer disabled, as certified by a health care provider. Upon receipt of certification the administrator shall determine whether the member meets the qualifications for disability benefits. In making this determination the administrator shall follow the same procedure used in making the initial determination of disability provided in section 5 of this Act. A member's disability benefits shall be suspended and subject to termination if the member refuses to undergo an examination or assessment requested by the disability advisory committee or the administrator. If the administrator finds that the member no longer meets the qualifications for disability benefits, the administrator shall notify the member of this finding by certified mail and the payment of disability benefits shall terminate thirty days after receipt of the notice. Such a finding by the administrator is subject to appeal and review as a contested case.

Section 11. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If a member's disability benefits pursuant to section 7 of this Act have terminated and the member returns to covered employment, the member and employer shall make contributions pursuant to § 3-12-71.

Section 12. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

Upon retirement, a member who received disability benefits pursuant to section 7 of this Act and whose benefits were terminated and who returned to covered employment shall receive a retirement benefit based on the member's credited service prior to receiving disability benefits and after receiving disability benefits. The final average compensation used in the calculation of the retirement benefit is the greater of:

- (1) The member's final average compensation at the date of retirement; or
- (2) The member's final average compensation at the date of disability, increased by the improvement factor from the date of the termination of disability benefits to the date of retirement.

Section 13. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

Upon retirement, a member who received disability benefits pursuant to section 7 of this Act and whose benefits were terminated and who did not return to covered employment shall receive a retirement benefit based on the member's credited service prior to receiving disability benefits. The final average compensation used in the calculation of the retirement benefit shall be the final average compensation at the date of disability, increased by the improvement factor from the date of the termination of disability benefits to the date of retirement.

Section 14. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

Upon the death of a member receiving disability benefits pursuant to section 7 of this Act, who dies prior to normal retirement age, a family benefit shall be paid on behalf of any child of the member. The monthly amount of the family benefit is the amount of the monthly disability benefits the member received prior to death. The monthly family benefit shall be equally apportioned among any children of the member and shall be paid on behalf of any child to the conservator or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit is payable directly to the child. As any child becomes ineligible pursuant to subdivision 3-12-47(14), the family benefit shall be reallocated among any remaining children of the deceased member. The family benefit terminates if there are no children of the deceased member pursuant to subdivision 3-12-47(14).

Section 15. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If no family benefit is being paid pursuant to section 14 of this Act, a surviving spouse of a member who received disability benefits pursuant to section 7 of this Act shall, upon attaining the age of sixty-five, receive a monthly benefit, payable for the life of the surviving spouse, equal to one of the following calculations, whichever is applicable:

- (1) If there was a family benefit paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the improvement factor from the date the last family benefit was paid; or
- (2) If there was no family benefit paid, sixty percent of the deceased member's disability benefit paid at the time of the member's death, increased by the improvement factor from the date of the member's death.

Section 16. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If a member dies after normal retirement age while receiving benefits pursuant to section 7 of this Act, and no other benefits are being paid on behalf of the member, the member's surviving spouse shall receive a surviving spouse benefit, payable in monthly installments, equal to sixty percent of the monthly disability benefit that the member received prior to death.

Section 17. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

On the death of a contributing member after June 30, 2015, who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24), or who died while performing usual duties for an employer, and prior to the earlier of the member attaining normal retirement age or the member's retirement, a family benefit shall be paid on behalf of any child of such member. The total family benefit is the greater of:

- (1) Twenty-five percent of the member's final average compensation at the time of death; or
- (2) The member's unreduced accrued retirement benefit at the time of death.

The family benefit, which shall be paid in monthly installments, shall be equally apportioned among any children of the member and shall be paid on behalf of any child to the conservator or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit is payable directly to the child. As any child becomes ineligible pursuant to subdivision 3-12-47(14), the family benefit shall be reallocated among any remaining children of the deceased member. The family benefit terminates if there are no children of the deceased member pursuant to subdivision 3-12-47(14).

Section 18. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If no family benefit is being paid pursuant to section 17 of this Act, a surviving spouse of a

contributing member who died after June 30, 2015, shall, upon attaining the age sixty-five, receive a surviving spouse benefit calculated as follows, whichever is applicable:

- (1) If a family benefit had been paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the improvement factor from the date the last family benefit was paid; or
- (2) If a family benefit had not been paid, sixty percent of the amount calculated pursuant to subsection (a) or (b), whichever is greater, increased by the improvement factor from the date of the member's death:
 - (a) Twenty-five percent of the member's final average compensation at the time of the member's death; or
 - (b) The member's unreduced accrued retirement benefit at the time of the member's death.

The surviving spouse benefit shall be paid in monthly installments for the life of the surviving spouse.

Section 19. That subdivision (14) of § 3-12-47 be amended to read as follows:

- (14) "Child," depending on the circumstances, as follows:
 - (a) For purposes of benefits pursuant to this chapter, an unmarried dependent child of the member, who has not passed the child's nineteenth birthday and each unmarried dependent child, who is totally and permanently disabled, either physically or mentally, regardless of the child's age, if the disability occurred prior to age nineteen. It includes a stepchild or a foster child who depends on the member for support and lives in the household of the member in a regular parent-child relationship. It also includes any child of the member conceived during the member's lifetime and born after the member's death; or

- (b) For purposes of beneficiary-type payments pursuant to this chapter, a person entitled to take as a child via intestate succession pursuant to the provisions of Title 29A;

Section 20. That subdivision (26) of § 3-12-47 be amended to read as follows:

- (26) "Disability" or "disabled," any medically determinable physical or mental impairment that prevents a member from performing the member's usual duties for the member's employer, even with accommodations, or performing the duties of a comparable level position for the member's employer. The term excludes any condition resulting from willful, self-inflicted injury;

Section 21. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;

Section 22. That subdivision (65) of § 3-12-47 be amended to read as follows:

- (65) "Spouse," a person who was married to the member at the time of the death of the member and whose marriage was both more than twelve months prior to the death of the member and prior to the member's retirement;

Section 23. That § 3-12-95 be amended to read as follows:

3-12-95. On the death of a contributing member prior to July 1, 2015, and prior to the earlier of the member attaining normal retirement age or the member's retirement, who has one or more years of contributory service; or if there has been a break in the member's employment of more than one year, one-half year of contributory service having been performed after the end of the last such break; or if the member was receiving a disability benefit which commenced after July 1, 1974, and was based on an application received by the system prior to July 1, 2015, the following benefits shall be

paid:

- (1) A surviving spouse having the care of children shall receive an annual amount, payable in monthly installments, equal to forty percent of the member's final average compensation, plus ten percent of such final average compensation for each child to a maximum of six such children;
- (2) The conservator or custodian of each child, on whose account there is no benefit payable under subdivision (1), shall receive on behalf of each child, to a maximum of five such children, an annual amount, payable in monthly installments, equal to twenty percent of the member's final average compensation;
- (3) If the sum of benefits payable under subdivisions (1) and (2) exceeds one hundred percent of the member's final average compensation, the benefits payable under both subdivisions (1) and (2) shall be proportionally reduced so that the total of the benefits is equal to one hundred percent of the member's final average compensation;
- (4) If there are no benefits being paid under subdivision (1) and the member's accumulated contributions have not been withdrawn pursuant to § 3-12-97, the spouse who has reached age sixty-five shall receive a monthly payment equal to sixty percent of the amount which would have been payable to the deceased member at normal retirement age based on the member's credited and projected service and projected compensation. The benefit payable under this subdivision shall be increased by application of the improvement factor commencing each July first for each complete twelve-month period between the date the member would have reached normal retirement age and the date benefits commence to the spouse.

Family benefits begin to accrue on the first day of the month following the death of the member.

Section 24. That § 3-12-98 be amended to read as follows:

3-12-98. A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h) of subdivision 3-12-47(24) since the member's most recent entry into active status and prior to becoming disabled or was disabled by accidental means while performing usual duties for an employer, is eligible for a disability benefit if the disability is expected to be of long, continued, and indefinite duration of at least one year. In order to be eligible for a disability benefit, a member must be disabled on the date the member's contributory service ends. Any member who fails to file an application for disability benefits with the administrator within three years of the date on which the member's contributory service ends, forfeits all rights to disability benefits. Any information required for a complete application must be received within one year after the application for disability benefits was received. If the required information is not received by the system within one year after the application is received, the member may reapply. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 25. That § 3-12-99 be amended to read as follows:

3-12-99. The disability benefit for the first thirty-six months shall be equal to fifty percent of the member's final average compensation immediately preceding the date of disability, increased by ten percent of such compensation for each child to a maximum of four such children.

Starting with the thirty-seventh month, if the member is eligible for and receiving disability benefits from social security, the disability benefit from the system is equal to the greater of the amount paid during the first thirty-six months less the amount of primary social security or the amount of the member's unreduced accrued retirement benefit as of the date of disability. If the

member's unreduced accrued retirement benefit is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. In no event may the annual amount of a disability benefit be less than twenty percent of the compensation on which the initial disability benefit was based.

Starting with the thirty-seventh month, if the member is not eligible for and receiving disability benefits from social security, the disability benefit from the system is equal to the greater of twenty percent of the compensation on which the initial disability benefit was based or the amount of the member's unreduced accrued retirement benefit as of the date of disability. If the member's unreduced accrued retirement benefit is the greater, it is immediately payable by the system notwithstanding any other provisions to the contrary. The disability benefit shall be paid only in the form of monthly installments. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 26. That § 3-12-99.1 be amended to read as follows:

3-12-99.1. That portion of a disability benefit that is payable on account of children shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-47(14). However, that portion of a disability benefit that is payable on account of children shall increase if a disabled member gains an additional child who is eligible pursuant to subdivision 3-12-47(14). All other provisions in § 3-12-101 do not apply to members receiving a disability benefit pursuant to this chapter. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 27. That § 3-12-101 be amended to read as follows:

3-12-101. Disability benefits shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems. Disability benefits payable on account of children shall be reduced when children become ineligible. In no event may the annual amount of a disability

benefit be less than the greater of six percent of the compensation on which the disability benefit is based or six hundred dollars a year.

However, any disability benefit effective prior to July 1, 1994, and payable on or after that date may not be reduced by any benefit payable on account of a veteran's disability or from any insured or self-insured short-term disability plan sponsored by an employer and paid for by the employee or paid for under a salary reduction plan. Further, any disability benefit effective prior to July 1, 1994, and payable on or after July 1, 1995, may not be reduced by any benefit payable on account of a federal military retirement or a federal national guard retirement. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 28. That § 3-12-103 be amended to read as follows:

3-12-103. When a person who is receiving a disability benefit reaches age sixty-five, or at such later date if there are no eligible children, or if over age sixty at the time of commencement of disability, after a period of five years, the member's disability benefit shall be terminated and thereafter the member shall receive the benefit payable for service retirement at that age, calculated on the projected compensation and projected service. If a person who received a disability benefit returns to employment prior to normal retirement age, the member's credited service shall include the time of disability. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 29. That § 3-12-103.1 be amended to read as follows:

3-12-103.1. A member's disability benefit that was based on an application received by the system prior to July 1, 2015, shall terminate thirty days after the earliest of the following:

- (1) The member no longer is disabled;
- (2) The member no longer is subject to the medical condition that caused the disability;

- (3) The member refuses to undergo a medical examination requested by the system for the purpose of reviewing the medical condition that caused the disability;
- (4) The member returns to continuous employment in the position the member held prior to becoming disabled; or
- (5) The member returns to continuous employment in a position of comparable level to the position the member held prior to becoming disabled.

However, a member's disability benefit shall terminate immediately if the member's disability benefit is converted to a service retirement benefit pursuant to § 3-12-103.

Section 30. That § 3-12-110 be amended to read as follows:

3-12-110. If the aggregate benefits payable to a member and the member's surviving spouse and minor children, after all benefits currently or potentially payable under any provision of this chapter have terminated, do not total to the member's accumulated contributions including one hundred percent of employer contributions if the member died prior to July 1, 2010, or eighty-five percent of employer contributions if the member died on or after July 1, 2010, then the balance equal to the difference between the accumulated contributions and total payments made to date shall be paid in a lump sum as provided in this section.

Amounts payable under this section shall be paid as follows:

- (1) To the beneficiary or entity designated by the member, if any is designated; or
- (2) If no beneficiary or entity is designated, then to the member's surviving spouse; or
- (3) If no beneficiary or entity is designated and there is no surviving spouse, then to all surviving children, irrespective of age, on a share alike basis; or
- (4) If no beneficiary or entity is designated, there is no surviving spouse, and there are no surviving children, then to the member's estate.

If no claim for payment due upon the death of a deceased member is made within three years

from date of death, the payment shall revert to the system. However, a claim may be honored after the expiration of the three-year reversion period if, in the opinion of the administrator, payment of the claim is warranted by exceptional circumstances.

This section does not apply to any member who withdraws accumulated contributions after termination of employment, or to any nonvested member who dies after termination of employment.

Section 31. That § 3-12-131 be amended to read as follows:

3-12-131. Notwithstanding any provision of this chapter to the contrary, whenever a member withdraws accumulated contributions under § 3-12-76 and becomes a permanent full-time employee within twelve months after withdrawal, contributions must have been made to the system for a period of twelve consecutive months before the member is eligible for benefits pursuant to § 3-12-95. The member shall furthermore be ineligible to apply for additional survivor protection pursuant to § 3-12-104 as a new member of the system. To be eligible for a disability benefit pursuant to § 3-12-98 or section 1 of this Act, the member must have at least three years of contributory service since the date of the last withdrawal unless the member was disabled by accidental means while performing the usual duties for the employer.

Section 32. That § 3-12-141 be amended to read as follows:

3-12-141. No application for disability benefits pursuant to § 3-12-98 may be determined until the employer has certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or comparable level employment in another position.

Section 33. That § 3-12-143 be amended to read as follows:

3-12-143. For the first thirty-six months of a disability benefit provided by § 3-12-99, the maximum amount that a member may receive in any calendar year from the disability benefit and

earned income, as defined in § 32(c)(2) of the Internal Revenue Code, is one hundred percent of the member's final average compensation. Starting with the thirty-seventh month of such disability benefit, the maximum amount that a member may receive in any calendar year from disability benefits provided by the federal Social Security Act equal to the primary insurance amount, the disability benefit provided by this chapter and earned income, as defined in § 32(c)(2) of the Internal Revenue Code, is one hundred percent of the member's final average compensation. The maximum amount shall be indexed for each full fiscal year during which the member is eligible for such disability benefit by the improvement factor defined in subdivision 3-12-47(41). Any amount exceeding this maximum amount shall reduce each monthly disability benefit payable pursuant to § 3-12-99 in the following fiscal year on a pro rata basis.

Any member eligible to receive a disability benefit shall report to the system in writing any earned income of the member. The report shall be filed with the system no later than May thirty-first following the end of each calendar year in which a disability benefit is paid. A disabled member may file a signed copy of the member's individual income tax return in lieu of the report. No report or return need be filed for the calendar year in which the member dies or converts to a normal or early retirement benefit under this chapter. The disability benefit of any member failing to file a report or return as required in this section shall be suspended until the report or return is filed. The reduction may occur, however, only if a disability benefit is being paid by the system, but may not reduce the disability benefit below the minimum provided for in § 3-12-99.

This section applies to any member receiving or entitled to receive a disability benefit pursuant to § 3-12-98.

Section 34. That ARSD 62:01:02:06 be amended to read as follows:

62:01:02:06. Refund of active contributions made during period of disability -- Granted credited service. If a disabled member receiving credited service pursuant to SDCL 3-12-103 and §

62:01:04:05.01 becomes employed by a member employer unit, the member and employer shall make active contributions during the period of such employment pursuant to SDCL 3-12-71. Upon the member's conversion of disabled status to retired status, upon the member's termination of disabled status or upon the member's termination of employment, whichever occurs first, the member may request a refund of the member's accumulated contributions made during that period when the member also was receiving credited service due to the disability. The provisions of this section apply to any member whose application for disability benefits is received by the system prior to July 1, 2015.

Section 35. That ARSD chapter 62:01:04 be amended by adding thereto a NEW SECTION to read as follows:

62:01:04:00. Application of chapter. The provisions of this chapter apply to any member whose application for disability benefits was received by the system prior to July 1, 2015.

Section 36. That ARSD 62:01:04:02 be amended to read as follows:

62:01:04:02. Disability -- Beginning of benefits. A member whose application for a disability benefit is approved shall receive the benefit beginning on the first day of the month following the date on which the member's contributory service terminates. If any member fails to terminate contributory service within one year after receiving notice that the member's application has been approved, the member's application approval expires.

An Act to revise the calculation of disability benefits and certain benefits payable upon death of members of the South Dakota Retirement System.

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I certify that the attached Act originated in the

SENATE as Bill No. 43

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 43
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State