HOUSE BILL NO. 348

INTRODUCED BY MARKS

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

IN THE HOUSE

- JANUARY 21, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON LABOR.
- JANUARY 23, 1989 FIRST READING.

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- FEBRUARY 1, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- FEBRUARY 2, 1989 PRINTING REPORT.
- FEBRUARY 3, 1989 SECOND READING, DO PASS.
- FEBRUARY 4, 1989 ENGROSSING REPORT.
- FEBRUARY 6, 1989 THIRD READING, PASSED. AYES, 93; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 7, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

- MARCH 4, 1989 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
- MARCH 6, 1989 SECOND READING, CONCURRED IN.
- MARCH 8, 1989 THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

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MARCH 9, 1989

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RECEIVED FROM SENATE. SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0233/01

Hause BILL NO. 348 1 INTRODUCED BY 2 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 5 LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL 6 7 PANEL EXAMINATION AND HEARING PROCESSES; AND AMENDING SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706, 8 9 MCA." 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 39-72-601, MCA, is amended to read: 12 "39-72-601. Medical panel. (1)--The--Montana--medical 13 association--may,-at-least-annually,-certify-to-the-division 14 15 as-nominees-10-or-more-licensed-physicians-of-the--state--to serve---on--the--medical--panel----At--least--three--of--the 16

10 Serverson-the medical panel. At least enfect of the 17 physicians-must-have-had-at-the--time--of--certification--at 18 least---5--years--practice--in--the--diagnosis7--care7--and 19 treatment-of-pulmonary-diseases-and--the--interpretation--of 20 x-ray-films---At-least-three-of-the-physicians-must-have-had 21 at---the---time---of--certification--qualifications--in--the 22 diagnosis7-care7-and-treatment-of-nonpulmonary--occupational 23 diseases7

24 (2)--Prom--the--list--submitted-as-provided-for-in-this
 25 section7-the-division-shall-appoint-five-or-more--physicians

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1 to-serve-on-the-medical-panel;

(3)--If-the-Montana-medical-association-fails-to-submit 2 the--list--of--nominees-as-provided-for-in-this-section7-the 3 4 division-shall-appoint-as-members-of-the-medical-panel--five 5 or--more--licensed--physicians--in--the-state---Three-of-the 6 panel-members-must-have-had-at-the-time--of--appointment--at 7 least---5--years---practice--in--the--diagnosis7--care7--and 8 treatment-of-pulmonary-diseases-and--the--interpretation--of 9 x-ray-films-(1) The division shall develop a list of physicians to 10 11 serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical 12 examiners. A physician on the panel must be certified by his 13 specialty board or be eligible for certification in the 14 specialty area appropriate to the claimant's condition in 15 16 relation to this chapter. (4)(2) The panel members shall appoint, as required, 17

18 one member of the panel to be the chairman."

Section 2. Section 39-72-608, MCA, is amended to read: "39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and panel report as provided in 39-72-602 shall must be borne by the insurer. The expense of a reexamination and panel report shall must be borne by the dissatisfied party requesting the reexamination. The expense of the

> -2- INTRODUCED BILL HB 348

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periodic medical examinations <u>and reports</u>, as provided in 39-72-607, shall must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall <u>must</u> be borne by the party requesting the autopsy."

Section 3. Section 39-72-612, MCA, is amended to read: 6 *39-72-612. Rehearing Hearing and appeal to workers' 7 compensation judge. (1) Within 20 days after the division 8 has issued its order of determination as to whether the 9 10 claimant is entitled to benefits under this chapter, a party 11 may request a rehearing hearing. In order to perfect an appeal to the workers' compensation judge, the appealing 12 13 party must shall request a rehearing hearing before the 14 division. The division may shall grant a rehearing hearing, and,--if--a--rehearing--is--granted, the division's final 15 16 determination may not be issued until after the rehearing 17 hearing. If--the--division--does-not-grant-a-rehearing; the division's-final-determination-is-issued--on--the--date--the 18 19 rehearing-is-denied-

20 (2) Appeals from a final determination of the division 21 shall must be made to the workers' compensation judge within 22 30 days after the division has issued its final 23 determination. The judge, after a hearing held pursuant to 24 39-71-2903 and 39-71-2904, shall make a final determination 25 concerning the claimant's claim. The judge may overrule the 1 division only on the basis that the division's determination
2 is:

3 (a) in violation of constitutional or statutory 4 provisions;

5 (b) in excess of the statutory authority of the 6 agency;

7 (c) made upon unlawful procedure;

8

(d) affected by other error of law;

9 (e) clearly erroneous in view of the reliable,
10 probative, and substantial evidence on the whole record; or
11 (f) arbitrary or capricious or characterized by abuse
12 of discretion or clearly unwarranted exercise of
13 discretion."

Section 4. Section 39-72-706, MCA, is amended to read: 14 "39-72-706. Aggravation. (1) Where If an occupational 15 disease is appravated by any other disease or infirmity not 16 itself compensable or where if disability or death from any 17 18 other cause not itself compensable is appravated, prolonged, 19 accelerated, or in any wise way contributed to by an occupational disease, the compensation and medical benefits 20 payable under this chapter shall must be reduced and limited 21 22 to such proportion only of the compensation and medical benefits that would be payable if the occupational disease 23 were the sole cause of the disability or death as such 24 occupational disease as a causative factor bears to all the 25

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1 causes of such disability or death.

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2 (2) Where <u>If</u> compensation is reduced a proportionate 3 amount as in subsection (1) above and the worker receives 4 disability social security benefits, the offset entitlement 5 granted to the insurer shall <u>must</u> be reduced in the same 6 proportionate amount as the compensation as long as the 7 worker continues to receive disability social security 8 benefits."

9 <u>NEW SECTION.</u> Section 5. Extension of authority. Any 10 existing authority to make rules on the subject of the 11 provisions of [this act] is extended to the provisions of 12 [this act].

-End-

51st Legislature

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HB 0348/02

APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

1	HOUSE BILL NO. 348
2	INTRODUCED BY MARKS
3	BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6	LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL
7	PANEL EXAMINATION AND HEARING PROCESSES; AND AMENDING
8	SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706,
9	MCA; AND PROVIDING AN EFFECTIVE DATE AND SOME RETROACTIVE
10	APPLICATION."
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 39-72-601, MCA, is amended to read:
14	"39-72-601. Medical panel. (±)TheMontana-medical
15	association-mayat-least-annually-certify-to-thedivision
16	asnominees10-or-more-licensed-physicians-of-the-state-to
17	serveonthemedicalpanelAtleastthreeofthe
18	physiciansmusthavehadat-the-time-of-certification-at
19	least5years'practiceinthediagnosis;care;and
20	treatmentofpulmonarydiseases-and-the-interpretation-of
21	x-ray-filmsAt-least-three-of-the-physicians-must-have-had
22	atthetimeofcertificationqualificationsinthe
23	diagnosis7care7-and-treatment-of-nonpulmonary-occupational
24	diseases.
25	(2)From-the-list-submitted-as-providedforinthis

1	sectionthe-division-shall-appoint-five-or-more-physicians
2	to-serve-on-the-medical-panel+
3	(3) If-the-Montana-medical-association-fails-to-submit
4	the-list-of-nominees-as-provided-for-inthissectionthe
5	divisionshall-appoint-as-members-of-the-medical-panel-five
6	or-more-licensed-physicians-inthestateThreeofthe
7	panelmembersmusthave-had-at-the-time-of-appointment-at
8	teast5yearspracticeinthediagnosiscareand
9	treatmentofpulmonarydiseases-and-the-interpretation-of
10	x-rey-films.
11	(1) The division shall develop a list of physicians to
12	serve on the occupational disease medical panel. The list
13	may include physicians nominated by the board of medical
14	examiners. A physician on the panel must be certified by his
15	specialty board or be eligible for certification in the
16	specialty area appropriate to the claimant's condition in
17	relation to this chapter.
18	(4)(2) THE DIVISION SHALL SELECT A PANEL PHYSICIAN TO
19	EXAMINE A CLAIMANT AS REQUIRED. The panel-members DIVISION
20	shall appoint, as required, one member of the panel to be
21	the chairman."
22	Section 2. Section 39-72-608, MCA, is amended to read:
23	39-72-608. Payment of medical examination, report,
24	and autopsy expenses. The expense of the first medical
25	examination and panel report as provided in 39-72-602 shall

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SECOND READING

1 must be borne by the insurer. The expense of a reexamination and panel report shall must be borne by the dissatisfied 2 3 party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in ۵ 39-72-607, shall must be borne by the party requesting the 5 periodic medical examination. The expense of the autopsy, as 6 7 provided for in 39-72-606, shall must be borne by the party requesting the autopsy." 8

9 Section 3. Section 39-72-612, MCA, is amended to read: 10 "39-72-612. Rehearing Hearing and appeal to workers' 11 compensation judge. (1) Within 20 days after the division 12 has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party 13 14 may request a rehearing hearing. In order to perfect an appeal to the workers' compensation judge, the appealing 15 party must shall request a rehearing hearing before the 16 17 division. The division may shall grant a rehearing hearing, and,--if--a--rehearing--is--granted, the division's final 18 determination may not be issued until after the rehearing 19 hearing. If-the-division-does-not--grant--a--rehearing;--the 20 21 division-s--final--determination--is--issued-on-the-date-the 22 rehearing-is-denied-

23 (2) Appeals from a final determination of the division
24 shall must be made to the workers' compensation judge within
25 30 days after the division has issued its final

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determination. The judge, after a hearing held pursuant to 1 39-71-2903 and 39-71-2904, shall make a final determination 2 concerning the claimant's claim. The judge may overrule the 3 division only on the basis that the division's determination 4 5 is: (a) in violation of constitutional or statutory 6 provisions: 7 (b) in excess of the statutory authority of the 8 9 agency; (c) made upon unlawful procedure; 10 11 (d) affected by other error of law; (e) clearly erroneous in view of the reliable, 12 probative, and substantial evidence on the whole record; or 13 (f) arbitrary or capricious or characterized by abuse 14 discretion or clearly unwarranted exercise of 15 of 16 discretion." Section 4. Section 39-72-706, MCA, is amended to read: 17 "39-72-706. Aggravation. (1) Where If an occupational 18 disease is aggravated by any other disease or infirmity not 19 itself compensable or where if disability or death from any 20 other cause not itself compensable is aggravated, prolonged, 21 accelerated, or in any wise way contributed to by an 22 23 occupational disease, the compensation and-medical--benefits payable under this chapter shall must be reduced and limited 24

25 to such proportion only of the compensation and-medical

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benefits that would be payable if the occupational disease
 were the sole cause of the disability or death as such
 occupational disease as a causative factor bears to all the
 causes of such disability or death.

5 (2) Where <u>If</u> compensation is reduced a proportionate 6 amount as in subsection (1) above and the worker receives 7 disability social security benefits, the offset entitlement 8 granted to the insurer shall <u>must</u> be reduced in the same 9 proportionate amount as the compensation as long as the 10 worker continues to receive disability social security 11 benefits."

12 <u>NEW SECTION.</u> Section 5. Extension of authority. Any 13 existing authority to make rules on the subject of the 14 provisions of [this act] is extended to the provisions of 15 [this act].

 16
 NEW SECTION.
 SECTION 6.
 EFFECTIVE DATE -- RETROACTIVE

 17
 APPLICABILITY. (1) [THIS ACT] IS EFFECTIVE JULY 1, 1989.

18 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE

19 MEANING OF 1-2-109, TO ALL OCCUPATIONAL DISEASE CLAIMS

20 PENDING BEFORE THE DIVISION.

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-End-

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Nonzana Legislative Council

THIRD READING

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is:

must be borne by the insurer. The expense of a reexamination 1 2 and panel report shall must be borne by the dissatisfied 3 party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 4 5 39-72-607, shall must be borne by the party requesting the 6 periodic medical examination. The expense of the autopsy, as 7 provided for in 39-72-606, shall must be borne by the party 8 requesting the autopsy."

Section 3. Section 39-72-612, MCA, is amended to read: 9 10 *39-72-612. Rehearing Hearing and appeal to workers' 11 compensation judge. (1) Within 20 days after the division 12 has issued its order of determination as to whether the 13 claimant is entitled to benefits under this chapter, a party may request a rehearing hearing. In order to perfect an 14 appeal to the workers' compensation judge, the appealing 15 16 party must shall request a rehearing hearing before the division. The division may shall grant a rehearing hearing, 17 and7--if--a--rehearing--is--granted7 the division's final 18 19 determination may not be issued until after the rehearing 20 hearing. If-the-division-does-nat--grant--a--rehearing---the 21 division's--final--determination--is--issued-on-the-date-the 22 rehearing-is-denied.

23 (2) Appeals from a final determination of the division 24 shall must be made to the workers' compensation judge within 25 30 days after the division has issued its final 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination

determination. The judge, after a hearing held pursuant to

(a) in violation of constitutional or statutory 6 provisions: 7

(b) in excess of the statutory authority of the 8 9 agency;

(c) made upon unlawful procedure; 10

11 (d) affected by other error of law;

(e) clearly erroneous in view of the reliable, 12 probative, and substantial evidence on the whole record; or 13 (f) arbitrary or capricious or characterized by abuse 14 discretion or clearly unwarranted exercise of 15 of 16 discretion."

Section 4. Section 39-72-706, MCA, is amended to read: 17

"39-72-706. Aggravation. (1) Where If an occupational 18 disease is aggravated by any other disease or infirmity not 19 itself compensable or where if disability or death from any 20 other cause not itself compensable is aggravated, prolonged, 21 22 accelerated, or in any wise way contributed to by an occupational disease, the compensation and-medical--benefits 23 payable under this chapter shall must be reduced and limited 24 to such proportion only of the compensation and medical 25

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benefits that would be payable if the occupational disease
 were the sole cause of the disability or death as such
 occupational disease as a causative factor bears to all the
 causes of such disability or death.

5 (2) Where <u>If</u> compensation is reduced a proportionate 6 amount as in subsection (1) above and the worker receives 7 disability social security benefits, the offset entitlement 8 granted to the insurer shall <u>must</u> be reduced in the same 9 proportionate amount as the compensation as long as the 10 worker continues to receive disability social security 11 benefits."

NEW SECTION. Section 5. Extension of authority. Any
existing authority to make rules on the subject of the
provisions of [this act] is extended to the provisions of
[this act].

16 NEW SECTION. SECTION 6. EFFECTIVE DATE -- RETROACTIVE

17 APPLICABILITY. (1) [THIS ACT] IS EFFECTIVE JULY 1, 1989.

18 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE

19 MEANING OF 1-2-109, TO ALL OCCUPATIONAL DISEASE CLAIMS

20 PENDING BEFORE THE DIVISION.

-End-

HOUSE BILL NO. 348 1 2 INTRODUCED BY MARKS BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION 3 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL 7 PANEL EXAMINATION AND HEARING PROCESSES; AND AMENDING SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706, 8 9 MCA; AND PROVIDING AN EFFECTIVE DATE AND SOME RETROACTIVE **APPLICATION.*** 10 11 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 13 Section 1. Section 39-72-601, MCA, is amended to read: 14 *39-72-601. Medical panel. {1}--The--Montang-medical 15 association-mayy-at-least-annually-certify-to-the--division 16 ns--nominees--10-or-more-licensed-physicians-of-the-state-to 17 serve--on--the--medical--panel:---At--least--three--of---the 18 physicians--must--have--had--at-the-time-of-certification-at 19 least--5--years--practice--in--the--diagnosis;--care;--and treatment--of--pulmonary--diseases-and-the-interpretation-of 20 21 x-ray-films---At-least-three-of-the-physicians-must-have-had 22 at--the--time--of--certification---qualifications---in---the 23 diagnosisy--carey-and-treatment-of-nonpulmonary-occupational 24 diseases.

25

(2)--Prom-the-list-submitted-as-provided--for--in--this



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1	sectionthe-division-shall-appoint-five-or-more-physicians
2	to-serve-on-the-medical-panel-
3	<pre>{3}if-the-Montana-medical-association-fails-to-submit</pre>
4	the-list-of-nominees-as-provided-for-inthissection;the
5	divisionshall-appoint-as-members-of-the-medical-panel-five
6	or-more-licensed-physicians-inthestateThreeofthe
7	panelmembersmusthave-had-at-the-time-of-appointment-at
8	least5years'practiceinthediagnosis7care7and
9	treatmentofpulmonarydiseases-and-the-interpretation-of
10	x-ray-films-
11	(1) The division shall develop a list of physicians to
12	serve on the occupational disease medical panel. The list
13	may include physicians nominated by the board of medical
14	examiners. A physician on the panel must be certified by his
15	specialty board or be eligible for certification in the
16	specialty area appropriate to the claimant's condition in
17	relation to this chapter.
18	(4)(2) THE DIVISION SHALL SELECT A PANEL PHYSICIAN TO
19	EXAMINE A CLAIMANT AS REQUIRED. The panel-members DIVISION
20	shall appoint, as required, one member of the panel to be
21	the chairman."
22	Section 2. Section 39-72-608, MCA, is amended to read:
23	"39-72-608. Payment of medical examination, report,
24	and autopsy expenses. The expense of the first medical
25	examination and panel report as provided in 39-72-602 shall

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must be borne by the insurer. The expense of a reexamination 1 2 and panel report shall must be borne by the dissatisfied party requesting the reexamination. The expense of the 3 periodic medical examinations and reports, as provided in 4 39-72-607, shall must be borne by the party requesting the S periodic medical examination. The expense of the autopsy, as 6 7 provided for in 39-72-606, shall must be borne by the party requesting the autopsy." 8

Section 3. Section 39-72-612, MCA, is amended to read: 9 "39-72-612. Rehearing Hearing and appeal to workers' 10 compensation judge. (1) Within 20 days after the division 11 has issued its order of determination as to whether the 12 13 claimant is entitled to benefits under this chapter, a party may request a rehearing hearing. In order to perfect an 14 appeal to the workers' compensation judge, the appealing 15 party must shall request a rehearing hearing before the 16 division. The division may shall grant a rehearing hearing, 17 18 and --- if -- a-- rehearing -- is -- granted , the division's final determination may not be issued until after the rehearing 19 hearing. if-the-division-does-not--grant--a--rehearing7--the 20 division-s--final--determination--is--issued-on-the-date-the 21 22 rehearing-is-denied-

(2) Appeals from a final determination of the division 23 24 shall must be made to the workers' compensation judge within 30 days after the division has issued its final 25

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1 determination. The judge, after a hearing held pursuant to 39-71-2983 and 39-71-2984, shall make a final determination 2 concerning the claimant's claim. The judge may overrule the 3 division only on the basis that the division's determination A is: 5 6 (a) in violation of constitutional or statutory 7 provisions; (b) in excess of the statutory authority of the 8 9 agency; made upon unlawful procedure; 10 (c) (d) affected by other error of law; 11 (e) clearly erroneous in view of the reliable, 12 probative, and substantial evidence on the whole record; or 13 (f) arbitrary or capricious or characterized by abuse 14 discretion or clearly unwarranted exercise of 15 of discretion." 16 Section 4. Section 39-72-706, MCA, is amended to read: 17 *39-72-706. Aggravation. (1) Where If an occupational 18 disease is aggravated by any other disease or infirmity not 19 itself compensable or where if disability or death from any 20 other cause not itself compensable is aggravated, prolonged, 21 accelerated, or in any wise way contributed to by an 22 occupational disease, the compensation and-medical--benefits

payable under this chapter shall must be reduced and limited 24 to such proportion only of the compensation and-medical 25

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<u>benefits</u> that would be payable if the occupational disease
 were the sole cause of the disability or death as such
 occupational disease as a causative factor bears to all the
 causes of such disability or death.

5 (2) Where <u>If</u> compensation is reduced a proportionate 6 amount as in subsection (1) above and the worker receives 7 disability social security benefits, the offset entitlement 8 granted to the insurer shall <u>must</u> be reduced in the same 9 proportionate amount as the compensation as long as the 10 worker continues to receive disability social security 11 benefits."

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 NEW SECTION.
 SECTION 6.
 EFFECTIVE DATE -- RETROACTIVE

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 APPLICABILITY. (1) [THIS ACT] IS EFFECTIVE JULY 1, 1989.

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20 PENDING BEFORE THE DIVISION.

-End-

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