

5299--B

2013-2014 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. PRETLOW, BRONSON, ROSENTHAL -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to the care and treatment of injured employees by certain licensed clinical social workers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "injured workers assistance act".
3 S 2. The workers' compensation law is amended by adding a new section
4 13-p to read as follows:
5 S 13-P. CARE AND TREATMENT OF INJURED EMPLOYEES BY CERTAIN LICENSED
6 CLINICAL SOCIAL WORKERS. 1. WHERE THE TERM "CLINICAL SOCIAL WORKER" IS
7 USED IN THIS SECTION, SUCH TERM SHALL MEAN A PERSON WHO IS DULY LICENSED
8 AND REGISTERED AS A LICENSED CLINICAL SOCIAL WORKER PURSUANT TO ARTICLE
9 ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW.
10 2. (A) AN INJURED EMPLOYEE, INJURED UNDER CIRCUMSTANCES WHICH MAKE
11 SUCH AN INJURY COMPENSABLE UNDER THIS ARTICLE, MAY LAWFULLY BE TREATED,
12 UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, BY A LICENSED CLINICAL
13 SOCIAL WORKER AUTHORIZED BY THE CHAIR TO RENDER SOCIAL WORK CARE PURSU-
14 ANT TO THIS SECTION. SUCH SERVICES SHALL BE WITHIN THE SCOPE OF LICENSED
15 CLINICAL SOCIAL WORK AS DEFINED IN SUBDIVISION TWO OF SECTION
16 SEVENTY-SEVEN HUNDRED ONE OF THE EDUCATION LAW. CLINICAL SOCIAL WORKERS
17 AUTHORIZED BY THE CHAIR TO PROVIDE SERVICES PURSUANT TO THIS SECTION,
18 SHALL NOT BE AUTHORIZED TO PERFORM INDEPENDENT MEDICAL EXAMINATIONS,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 EXCEPT FOR INDEPENDENT MEDICAL EXAMS RELATED TO THE NEED FOR CLINICAL
2 SOCIAL WORK SERVICES.

3 (B) MEDICAL BUREAUS, MEDICAL CENTERS JOINTLY OPERATED BY LABOR AND
4 MANAGEMENT REPRESENTATIVES, HOSPITALS AND HEALTH MAINTENANCE ORGANIZA-
5 TIONS, AUTHORIZED TO PROVIDE MEDICAL CARE PURSUANT TO SECTION THIRTEEN-C
6 OF THIS ARTICLE, MAY PROVIDE CLINICAL SOCIAL WORK SERVICES WHEN
7 REQUIRED, UPON THE REFERRAL OF AN AUTHORIZED PHYSICIAN, PROVIDED SUCH
8 CARE IS RENDERED BY A DULY REGISTERED, LICENSED AND AUTHORIZED CLINICAL
9 SOCIAL WORKER AS REQUIRED BY THIS SECTION.

10 (C) A LICENSED CLINICAL SOCIAL WORKER RENDERING SERVICE PURSUANT TO
11 THIS SECTION SHALL MAINTAIN RECORDS OF THE PATIENT'S CONDITION AND CLIN-
12 ICAL SOCIAL WORK TREATMENT, AND SUCH RECORDS OR REPORTS SHALL BE SUBMIT-
13 TED TO THE CHAIR ON SUCH FORMS AND AT SUCH TIMES AS THE CHAIR MAY
14 REQUIRE.

15 3. A LICENSED CLINICAL SOCIAL WORKER WHO IS DESIROUS OF BEING AUTHOR-
16 IZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION SHALL
17 FILE AN APPLICATION FOR AUTHORIZATION UNDER THIS SECTION WITH THE CLIN-
18 ICAL SOCIAL WORK PRACTICE COMMITTEE. THE APPLICANT SHALL AGREE TO
19 REFRAIN FROM SUBSEQUENTLY TREATING FOR REMUNERATION, AS A PRIVATE
20 PATIENT, ANY PERSON SEEKING CLINICAL SOCIAL WORK SERVICES, IN CONNECTION
21 WITH, OR AS A RESULT OF, ANY INJURY COMPENSABLE UNDER THIS CHAPTER, IF
22 HE OR SHE HAS BEEN REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS
23 AUTHORIZED TO RENDER SERVICES UNDER THIS CHAPTER. THIS AGREEMENT SHALL
24 RUN TO THE BENEFIT OF THE INJURED PERSON SO TREATED, AND SHALL BE AVAIL-
25 ABLE AS A DEFENSE IN ANY ACTION BY SUCH CLINICAL SOCIAL WORKER FOR
26 PAYMENT FOR TREATMENT RENDERED BY SUCH CLINICAL SOCIAL WORKER AFTER
27 BEING REMOVED FROM THE LIST OF CLINICAL SOCIAL WORKERS AUTHORIZED TO
28 RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION. THE CLINICAL
29 SOCIAL WORK PRACTICE COMMITTEE, IF IT DEEMS SUCH LICENSED CLINICAL
30 SOCIAL WORKER DULY QUALIFIED, SHALL RECOMMEND TO THE CHAIR THAT SUCH
31 PERSON BE AUTHORIZED TO RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS
32 SECTION. SUCH RECOMMENDATIONS SHALL BE ONLY ADVISORY TO THE CHAIR AND
33 SHALL NOT BE BINDING OR CONCLUSIVE. THE CHAIR SHALL PREPARE AND ESTAB-
34 LISH A SCHEDULE FOR THE STATE OR SCHEDULES LIMITED TO DEFINED LOCALITIES
35 OF CHARGES AND FEES FOR CLINICAL SOCIAL WORK TREATMENT AND CARE, TO BE
36 DETERMINED IN ACCORDANCE WITH AND BE SUBJECT TO CHANGE PURSUANT TO RULES
37 PROMULGATED BY THE CHAIR. BEFORE PREPARING SUCH SCHEDULE FOR THE STATE
38 OR SCHEDULES FOR LIMITED LOCALITIES THE CHAIR SHALL REQUEST THE CLINICAL
39 SOCIAL WORK PRACTICE COMMITTEE TO SUBMIT TO SUCH CHAIR A REPORT ON THE
40 AMOUNT OF REMUNERATION DEEMED BY SUCH COMMITTEE TO BE FAIR AND ADEQUATE
41 FOR THE TYPES OF CLINICAL SOCIAL WORK SERVICES TO BE RENDERED UNDER THIS
42 CHAPTER, BUT CONSIDERATION SHALL BE GIVEN TO THE VIEW OF OTHER INTER-
43 ESTED PARTIES. THE AMOUNTS PAYABLE BY THE EMPLOYER FOR SUCH TREATMENT
44 AND SERVICES SHALL BE THE FEES AND CHARGES ESTABLISHED BY SUCH SCHEDULE.

45 4. NO CLAIM FOR CLINICAL SOCIAL WORK SERVICES SHALL BE VALID AND
46 ENFORCEABLE AS AGAINST THE EMPLOYER OR EMPLOYEES UNLESS WITHIN
47 FORTY-EIGHT HOURS FOLLOWING THE FIRST TREATMENT THE CLINICAL SOCIAL
48 WORKER GIVING SUCH CARE OR TREATMENT FURNISHES TO THE EMPLOYER AND
49 DIRECTLY TO THE CHAIR A PRELIMINARY NOTICE OF SUCH INJURY AND TREATMENT,
50 AND WITHIN FIFTEEN DAYS THEREAFTER A MORE COMPLETE REPORT AND SUBSEQUENT
51 THERETO PROGRESS REPORTS AS REQUESTED IN WRITING BY THE CHAIR, BOARD,
52 EMPLOYER OR INSURANCE CARRIER, AT INTERVALS OF NOT LESS THAN THREE WEEKS
53 APART OR AT LESS FREQUENT INTERVALS IF REQUESTED ON FORMS PRESCRIBED BY
54 THE CHAIR. THE BOARD MAY EXCUSE THE FAILURE TO GIVE SUCH NOTICES WITHIN
55 THE DESIGNATED PERIODS WHEN IT FINDS IT TO BE IN THE INTEREST OF JUSTICE
56 TO DO SO.

1 5. FEES FOR CLINICAL SOCIAL WORK SERVICES SHALL BE PAYABLE ONLY TO A
2 DULY LICENSED CLINICAL SOCIAL WORKER AS LICENSED IN ARTICLE ONE HUNDRED
3 FIFTY-FOUR OF THE EDUCATION LAW, OR TO THE AGENT, EXECUTOR OR ADMINIS-
4 TRATOR OF THE ESTATE OF SUCH LICENSED CLINICAL SOCIAL WORKER. NO
5 LICENSED CLINICAL SOCIAL WORKER RENDERING TREATMENT TO A COMPENSATION
6 CLAIMANT SHALL COLLECT OR RECEIVE A FEE FROM SUCH CLAIMANT WITHIN THIS
7 STATE, BUT SHALL HAVE RECOURSE FOR PAYMENT OF SERVICES RENDERED ONLY TO
8 THE EMPLOYER UNDER THE PROVISIONS OF THIS SECTION.

9 6. WHENEVER HIS OR HER ATTENDANCE AT A HEARING IS REQUIRED, THE
10 LICENSED CLINICAL SOCIAL WORKER OF THE INJURED EMPLOYEE SHALL BE ENTI-
11 TLED TO RECEIVE A FEE FROM THE EMPLOYER IN AN AMOUNT TO BE FIXED BY THE
12 BOARD, IN ADDITION TO ANY FEE PAYABLE UNDER SECTION EIGHT THOUSAND ONE
13 OF THE CIVIL PRACTICE LAW AND RULES.

14 7. (A) UNLESS WITHIN THIRTY DAYS AFTER A BILL HAS BEEN RENDERED TO THE
15 EMPLOYER BY THE LICENSED CLINICAL SOCIAL WORKER WHO HAS TREATED AN
16 INJURED EMPLOYEE, SUCH EMPLOYER SHALL HAVE NOTIFIED THE CHAIR AND SUCH
17 CLINICAL SOCIAL WORKER IN WRITING THAT SUCH EMPLOYER DEMANDS AN IMPAR-
18 TIAL EXAMINATION OF THE FAIRNESS OF THE AMOUNT CLAIMED BY SUCH CLINICAL
19 SOCIAL WORKER FOR HIS OR HER SERVICES, THE RIGHT TO SUCH AN IMPARTIAL
20 EXAMINATION SHALL BE DEEMED TO BE WAIVED AND THE AMOUNT CLAIMED BY SUCH
21 CLINICAL SOCIAL WORKER SHALL BE DEEMED TO BE THE FAIR VALUE OF THE
22 SERVICES RENDERED. IF THE PARTIES FAIL TO AGREE AS TO THE SOCIAL WORK
23 CARE RENDERED UNDER THIS CHAPTER TO A CLAIMANT, SUCH VALUE SHALL BE
24 DECIDED BY THE SOCIAL WORK PRACTICE COMMITTEE AND THE MAJORITY DECISION
25 OF SUCH COMMITTEE SHALL BE CONCLUSIVE UPON THE PARTIES AS TO THE VALUE
26 OF THE SERVICES RENDERED. THE BOARD MAY MAKE AN AWARD FOR ANY SUCH BILL
27 OR PART THEREOF WHICH REMAINS UNPAID IN THE SAME MANNER AS AN AWARD FOR
28 BILLS RENDERED UNDER SUBDIVISIONS ONE AND THREE OF SECTION THIRTEEN-G OF
29 THIS ARTICLE, AND SUCH AWARD MAY BE COLLECTED IN LIKE MANNER AS AN AWARD
30 OF COMPENSATION. THE CHAIR SHALL ASSESS THE SUM OF FIFTY DOLLARS AGAINST
31 THE EMPLOYER FOR EACH SUCH AWARD MADE BY THE BOARD, WHICH SUM SHALL BE
32 PAID INTO THE STATE TREASURY.

33 (B) WHERE A LICENSED CLINICAL SOCIAL WORKER'S BILL HAS BEEN DETERMINED
34 TO BE DUE AND OWING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION,
35 THE BOARD MAY IMPOSE A PENALTY OF NOT MORE THAN ONE AND ONE-HALF PERCENT
36 INTEREST PER MONTH PAYABLE TO THE LICENSED CLINICAL SOCIAL WORKER IN
37 ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE BOARD.

38 (C) THE PARTIES TO SUCH PROCEEDING SHALL EACH PAY TO THE CHAIR A SUM
39 EQUAL TO FIVE PER CENTUM OF THE AMOUNT PAYABLE UNDER THE DECISION OF
40 SUCH COMMITTEE OR A MINIMUM OF FIVE DOLLARS, WHICHEVER IS GREATER. THE
41 SUMS SO COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURY TO REIM-
42 BURSE IT ON ACCOUNT OF THE EXPENSE OF ADMINISTERING THIS SECTION.

43 8. WITHIN THE LIMITS PRESCRIBED BY THE EDUCATION LAW FOR LICENSED
44 CLINICAL SOCIAL WORK SERVICES, THE REPORT OR TESTIMONY OF AN AUTHORIZED
45 CLINICAL SOCIAL WORKER CONCERNING THE CONDITION OF AN INJURED EMPLOYEE
46 AND TREATMENT THEREOF SHALL BE DEEMED COMPETENT EVIDENCE AND THE PROFES-
47 SIONAL OPINION OF THE LICENSED CLINICAL SOCIAL WORKER AS TO CAUSAL
48 RELATION AND AS TO REQUIRED TREATMENT SHALL BE DEEMED COMPETENT BUT
49 SHALL NOT BE CONTROLLING. NOTHING IN THIS SECTION SHALL BE DEEMED TO
50 DEPRIVE ANY EMPLOYER OR INSURANCE CARRIER OF ANY RIGHT TO A MEDICAL
51 EXAMINATION OR PRESENTATION OF MEDICAL TESTIMONY NOW CONFERRED BY LAW.

52 9. THE CHAIR SHALL PROMULGATE RULES GOVERNING THE PROCEDURE TO BE
53 FOLLOWED BY THOSE RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THIS
54 SECTION, WHICH RULES SO FAR AS PRACTICABLE SHALL CONFORM TO THE RULES
55 PRESENTLY IN EFFECT WITH REFERENCE TO MEDICAL CARE FURNISHED TO CLAIM-
56 ANTS IN WORKERS' COMPENSATION. IN CONNECTION WITH THE PROMULGATION OF

1 SUCH RULES THE CHAIR MAY CONSULT THE CLINICAL SOCIAL WORK PRACTICE
2 COMMITTEE AND MAY TAKE INTO CONSIDERATION THE VIEW OF OTHER INTERESTED
3 PARTIES.

4 10. THE CHAIR SHALL APPOINT FOR AND WITH JURISDICTION IN THE ENTIRE
5 STATE OF NEW YORK A SINGLE CLINICAL SOCIAL WORK PRACTICE COMMITTEE
6 COMPOSED OF TWO CLINICAL LICENSED SOCIAL WORKERS, AND ONE DULY LICENSED
7 PHYSICIAN OF THE STATE OF NEW YORK. EACH MEMBER OF SUCH COMMITTEE SHALL
8 RECEIVE COMPENSATION EITHER ON AN ANNUAL BASIS OR ON A PER DIEM BASIS TO
9 BE FIXED BY THE CHAIR WITHIN AMOUNTS APPROPRIATED THEREFOR. ONE OF SUCH
10 LICENSED CLINICAL SOCIAL WORKERS SHALL BE DESIGNATED BY THE CHAIR AS A
11 CHAIR OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE. NO MEMBER OF SUCH
12 COMMITTEE SHALL RENDER CLINICAL SOCIAL WORK SERVICES UNDER THIS SECTION
13 NOR BE AN EMPLOYER OR ACCEPT OR PARTICIPATE IN ANY FEE FROM ANY INSUR-
14 ANCE COMPANY AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS
15 STATE OR FROM ANY SELF-INSURER, WHETHER SUCH EMPLOYMENT OR FEE RELATES
16 TO A WORKERS' COMPENSATION CLAIM OR OTHERWISE. THE ATTORNEY GENERAL,
17 UPON REQUEST, SHALL ADVISE AND ASSIST SUCH COMMITTEE.

18 11. THE CLINICAL SOCIAL WORK PRACTICE COMMITTEE SHALL INVESTIGATE,
19 HEAR AND MAKE FINDINGS WITH RESPECT TO ALL CHARGES AS TO PROFESSIONAL OR
20 OTHER MISCONDUCT OF ANY AUTHORIZED CLINICAL SOCIAL WORKER AS PROVIDED IN
21 THIS SECTION UNDER RULES AND PROCEDURES TO BE PRESCRIBED BY THE CHAIR
22 AND SHALL REPORT EVIDENCE OF SUCH MISCONDUCT, WITH THEIR FINDINGS AND
23 RECOMMENDATIONS WITH RESPECT THERETO, TO THE CHAIR. THE FINDINGS, DECI-
24 SION AND RECOMMENDATION OF SUCH CLINICAL SOCIAL WORK PRACTICE COMMITTEE
25 SHALL BE ADVISORY TO THE CHAIR ONLY, AND SHALL NOT BE BINDING OR CONCLU-
26 SIVE UPON HIM OR HER. THE CHAIR SHALL REMOVE FROM THE LIST OF LICENSED
27 CLINICAL SOCIAL WORKERS AUTHORIZED TO RENDER CLINICAL SOCIAL WORK
28 SERVICES UNDER THIS CHAPTER THE NAME OF ANY CLINICAL SOCIAL WORKER WHO
29 HE OR SHE SHALL FIND AFTER REASONABLE INVESTIGATION IS DISQUALIFIED
30 BECAUSE SUCH CLINICAL SOCIAL WORKER:

31 (A) HAS BEEN GUILTY OF PROFESSIONAL OR OTHER MISCONDUCT OR INCOMPETEN-
32 CY IN CONNECTION WITH THE RENDERING OF CLINICAL SOCIAL WORK SERVICES,

33 (B) HAS EXCEEDED THE LIMITS OF HIS OR HER PROFESSIONAL COMPETENCE IN
34 RENDERING CLINICAL SOCIAL WORK SERVICES UNDER THE LAW, OR HAS MADE FALSE
35 STATEMENTS REGARDING QUALIFICATIONS IN THE APPLICATION FOR AUTHORI-
36 ZATION,

37 (C) HAS FAILED TO SUBMIT TIMELY, FULL AND TRUTHFUL CLINICAL SOCIAL
38 WORK EVALUATION AND TREATMENT REPORTS OF ALL FINDINGS TO THE EMPLOYER
39 AND DIRECTLY TO THE CHAIR OF THE BOARD WITHIN THE TIME LIMITS PROVIDED
40 IN THIS SECTION,

41 (D) HAS RENDERED CLINICAL SOCIAL WORKER SERVICES UNDER THIS CHAPTER
42 FOR A FEE LESS THAN THAT FIXED IN THE FEE SCHEDULE,

43 (E) HAS SOLICITED OR HAS EMPLOYED ANOTHER TO SOLICIT FOR
44 HIMSELF/HERSELF OR FOR ANOTHER PROFESSIONAL TREATMENT, EXAMINATION OR
45 CARE OF AN INJURED EMPLOYEE WITH ANY CLAIM UNDER THIS CHAPTER,

46 (F) HAS REFUSED TO APPEAR BEFORE OR ANSWER UPON REQUEST OF THE CHAIR,
47 BOARD, CLINICAL SOCIAL WORK PRACTICE COMMITTEE OR ANY DULY AUTHORIZED
48 OFFICER OF THE STATE, ANY LEGAL QUESTION OR PRODUCE ANY RELEVANT BOOK OR
49 PAPER CONCERNING CONDUCT UNDER AN AUTHORIZATION GRANTED UNDER LAW, OR

50 (G) HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PARTICIPATED IN
51 THE DIVISION, TRANSFERENCE, ASSIGNMENT, REBATING, SPLITTING OR REFUNDING
52 OF A FEE FOR, OR HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PROF-
53 ITED BY MEANS OF A CREDIT OR OTHERWISE VALUABLE CONSIDERATION AS A
54 COMMISSION, DISCOUNT OR GRATUITY IN CONNECTION WITH THE TREATMENT OF A
55 WORKERS' COMPENSATION CLAIMANT.

1 12. ANY PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE, AND ANY PERSON WHO
2 AIDS ANOTHER TO VIOLATE OR ATTEMPTS TO INDUCE HIM OR HER TO VIOLATE THE
3 PROVISIONS OF PARAGRAPH (G) OF SUBDIVISION ELEVEN OF THIS SECTION SHALL
4 BE GUILTY OF A MISDEMEANOR.

5 13. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING IN ANY
6 RESPECT THE POWER OR DUTY OF THE CHAIR TO INVESTIGATE INSTANCES OF
7 MISCONDUCT, EITHER BEFORE OR AFTER INVESTIGATION BY THE CLINICAL SOCIAL
8 WORK PRACTICE COMMITTEE, OR TO TEMPORARILY SUSPEND THE AUTHORIZATION OF
9 ANY LICENSED CLINICAL SOCIAL WORKER BELIEVED TO BE GUILTY OF SUCH
10 MISCONDUCT. THE PROVISIONS OF SUBDIVISION ONE OF SECTION THIRTEEN-D OF
11 THIS ARTICLE WHICH ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS
12 SECTION SHALL BE APPLICABLE AS IF FULLY SET FORTH IN THIS SECTION.

13 14. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT CLINICAL SOCIAL
14 WORKERS WHO PRACTICE AS PARTNERS, IN GROUPS OR AS A PROFESSIONAL CORPO-
15 RATION FROM POOLING FEES AND MONEYS RECEIVED, EITHER BY THE PARTNERSHIP,
16 PROFESSIONAL CORPORATION OR GROUP OR BY THE INDIVIDUAL MEMBERS THEREOF,
17 FOR PROFESSIONAL SERVICES FURNISHED BY ANY INDIVIDUAL PROFESSIONAL
18 MEMBER, OR EMPLOYEE OF SUCH PARTNERSHIP, CORPORATION OR GROUP, NOR SHALL
19 THE PROFESSIONALS CONSTITUTING THE PARTNERSHIPS, CORPORATIONS, OR GROUPS
20 BE PROHIBITED FROM SHARING, DIVIDING OR APPORTIONING THE FEES AND MONEYS
21 RECEIVED BY THEM OR BY THE PARTNERSHIP, CORPORATION OR GROUP IN ACCORD-
22 ANCE WITH A PARTNERSHIP OR OTHER AGREEMENT.

23 S 3. This act shall take effect on the one hundred eightieth day after
24 it shall have become a law. Effective immediately, the addition, amend-
25 ment and/or repeal of any rules and regulations necessary to implement
26 the provisions of this act on its effective date are authorized to be
27 made on or before such effective date.