

2830--A

2015-2016 Regular Sessions

I N   S E N A T E

January 29, 2015

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Introduced by Sens. KRUEGER, AVELLA, HAMILTON, HASSELL-THOMPSON, HOYLMAN, LATIMER, MONTGOMERY, PARKER, PERALTA, PERKINS, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, in relation to extending the length of time over which major capital improvement expenses may be recovered

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

1     Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section  
2     26-405 of the administrative code of the city of New York, as amended by  
3     section 31 of part A of chapter 20 of the laws of 2015, is amended to  
4     read as follows:  
5     (g) (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSU-  
6     ANT TO ITEM (II) OF THIS SUBPARAGRAPH SHALL CEASE WHEN THE OWNER HAS  
7     RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;  
8     (II) There has been since July first, nineteen hundred seventy, a  
9     major capital improvement [required for the operation, preservation or  
10    maintenance of the structure. An adjustment under this subparagraph (g)  
11    for any order of the commissioner issued after the effective date of the  
12    rent act of 2015 shall be in an amount sufficient to amortize the cost  
13    of the improvements pursuant to this subparagraph (g) over an eight-year  
14    period for buildings with thirty-five or fewer units or a nine year  
15    period for buildings with more than thirty-five units,]; PROVIDED THAT  
16    THE COMMISSIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE  
17    UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR

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

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1 THE OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE  
2 INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A  
3 MONTHLY SURCHARGE TO THE MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED  
4 AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT  
5 TO THE MAXIMUM RENT. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE  
6 AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR,  
7 DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY  
8 THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLO-  
9 CABLE TO ANY APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO  
10 SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APART-  
11 MENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID  
12 SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A  
13 FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE  
14 YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE  
15 BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY; or

16 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section  
17 26-405 of the administrative code of the city of New York, as amended by  
18 chapter 749 of the laws of 1990, is amended to read as follows:

19 (k) The landlord has incurred, since January first, nineteen hundred  
20 seventy, in connection with and in addition to a concurrent major capi-  
21 tal improvement pursuant to subparagraph (g) of this paragraph, other  
22 expenditures to improve, restore or preserve the quality of the struc-  
23 ture. An adjustment under this subparagraph shall be granted only if  
24 such improvements represent an expenditure equal to at least ten per  
25 centum of the total operating and maintenance expenses for the preceding  
26 year. An adjustment under this subparagraph shall be in addition to any  
27 adjustment granted for the concurrent major capital improvement and  
28 shall be [in an amount sufficient to amortize the cost of the improve-  
29 ments pursuant to this subparagraph over a seven-year period] IMPLE-  
30 MENTED IN THE SAME MANNER AS SUCH MAJOR CAPITAL IMPROVEMENT AS A FURTHER  
31 SURCHARGE TO THE MAXIMUM RENT.

32 S 3. Paragraph 6 of subdivision c of section 26-511 of the administra-  
33 tive code of the city of New York, as amended by section 29 of part A of  
34 chapter 20 of the laws of 2015, is amended to read as follows:

35 (6) provides criteria whereby the commissioner may act upon applica-  
36 tions by owners for increases in excess of the level of fair rent  
37 increase established under this law provided, however, that such crite-  
38 ria shall provide [(a)] as to hardship applications, for a finding that  
39 the level of fair rent increase is not sufficient to enable the owner to  
40 maintain approximately the same average annual net income (which shall  
41 be computed without regard to debt service, financing costs or manage-  
42 ment fees) for the three year period ending on or within six months of  
43 the date of an application pursuant to such criteria as compared with  
44 annual net income, which prevailed on the average over the period nine-  
45 teen hundred sixty-eight through nineteen hundred seventy, or for the  
46 first three years of operation if the building was completed since nine-  
47 teen hundred sixty-eight or for the first three fiscal years after a  
48 transfer of title to a new owner provided the new owner can establish to  
49 the satisfaction of the commissioner that he or she acquired title to  
50 the building as a result of a bona fide sale of the entire building and  
51 that the new owner is unable to obtain requisite records for the fiscal  
52 years nineteen hundred sixty-eight through nineteen hundred seventy  
53 despite diligent efforts to obtain same from predecessors in title and  
54 further provided that the new owner can provide financial data covering  
55 a minimum of six years under his or her continuous and uninterrupted  
56 operation of the building to meet the three year to three year compar-

1   ative test periods herein provided[; and (b) as to completed building-  
2   wide major capital improvements, for a finding that such improvements  
3   are deemed depreciable under the Internal Revenue Code and that the cost  
4   is to be amortized over an eight-year period for a building with thir-  
5   ty-five or fewer housing accommodations, or a nine-year period for a  
6   building with more than thirty-five housing accommodations, for any  
7   determination issued by the division of housing and community renewal  
8   after the effective date of the rent act of 2015, based upon cash  
9   purchase price exclusive of interest or service charges]. Notwithstand-  
10   ing anything to the contrary contained herein, no hardship increase  
11   granted pursuant to this paragraph shall, when added to the annual gross  
12   rents, as determined by the commissioner, exceed the sum of, (i) the  
13   annual operating expenses, (ii) an allowance for management services as  
14   determined by the commissioner, (iii) actual annual mortgage debt  
15   service (interest and amortization) on its indebtedness to a lending  
16   institution, an insurance company, a retirement fund or welfare fund  
17   which is operated under the supervision of the banking or insurance laws  
18   of the state of New York or the United States, and (iv) eight and one-  
19   half percent of that portion of the fair market value of the property  
20   which exceeds the unpaid principal amount of the mortgage indebtedness  
21   referred to in subparagraph (iii) of this paragraph. Fair market value  
22   for the purposes of this paragraph shall be six times the annual gross  
23   rent. The collection of any increase in the stabilized rent for any  
24   apartment pursuant to this paragraph shall not exceed six percent in any  
25   year from the effective date of the order granting the increase over the  
26   rent set forth in the schedule of gross rents, with collectability of  
27   any dollar excess above said sum to be spread forward in similar incre-  
28   ments and added to the stabilized rent as established or set in future  
29   years;

30   S 4. Subdivision c of section 26-511 of the administrative code of the  
31   city of New York is amended by adding two new paragraphs 6-b and 6-c to  
32   read as follows:

33   (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-  
34   TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT  
35   INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-  
36   RIA SHALL PROVIDE AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVE-  
37   MENTS, FOR A FINDING THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER  
38   THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE  
39   OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE INCREASE  
40   PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY  
41   SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED  
42   AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL ADJUSTMENT  
43   OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER SUBDIVISION B OF SECTION  
44   26-510 OF THIS LAW. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE  
45   AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR,  
46   DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY  
47   THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLO-  
48   CABLE TO ANY APARTMENT, IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL  
49   TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH  
50   APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE  
51   SAID SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS  
52   AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY  
53   ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD  
54   HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY.

(6-C) COLLECTION OF SURCHARGES IN EXCESS OF THE LEVEL OF FAIR RENT AUTHORIZED PURSUANT TO PARAGRAPH SIX-B OF THIS SUBDIVISION SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT.

S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by section 30 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;

(II) there has been since January first, nineteen hundred seventy-four a major capital improvement [required for the operation, preservation or maintenance of the structure. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015,]; PROVIDED THAT THE COMMISSIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL RENT ADJUSTMENT AUTHORIZED BY THE RENT GUIDELINES BOARD UNDER THIS ACT. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY, or

S 6. The second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 25 of part B of chapter 97 of the laws of 2011, subparagraph 7 as amended by section 32 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale. Where, however, the assessed valuation of the land exceeds four times the assessed valuation of the buildings thereon, the commission may determine a valuation of the property equal to five times the equalized assessed valuation of the buildings, for the purposes of this subparagraph. The commission may make a determination that the valuation of the property is an amount different from such equalized assessed valuation where there is a request for a reduction in such assessed

1 valuation currently pending; or where there has been a reduction in the  
2 assessed valuation for the year next preceding the effective date of the  
3 current assessed valuation in effect at the time of the filing of the  
4 application. Net annual return shall be the amount by which the earned  
5 income exceeds the operating expenses of the property, excluding mort-  
6 gage interest and amortization, and excluding allowances for obsoles-  
7 cence and reserves, but including an allowance for depreciation of two  
8 per centum of the value of the buildings exclusive of the land, or the  
9 amount shown for depreciation of the buildings in the latest required  
10 federal income tax return, whichever is lower; provided, however, that  
11 (1) no allowance for depreciation of the buildings shall be included  
12 where the buildings have been fully depreciated for federal income tax  
13 purposes or on the books of the owner; or (2) the landlord who owns no  
14 more than four rental units within the state has not been fully compen-  
15 sated by increases in rental income sufficient to offset unavoidable  
16 increases in property taxes, fuel, utilities, insurance and repairs and  
17 maintenance, excluding mortgage interest and amortization, and excluding  
18 allowances for depreciation, obsolescence and reserves, which have  
19 occurred since the federal date determining the maximum rent or the date  
20 the property was acquired by the present owner, whichever is later; or  
21 (3) the landlord operates a hotel or rooming house or owns a cooperative  
22 apartment and has not been fully compensated by increases in rental  
23 income from the controlled housing accommodations sufficient to offset  
24 unavoidable increases in property taxes and other costs as are allocable  
25 to such controlled housing accommodations, including costs of operation  
26 of such hotel or rooming house, but excluding mortgage interest and  
27 amortization, and excluding allowances for depreciation, obsolescence  
28 and reserves, which have occurred since the federal date determining the  
29 maximum rent or the date the landlord commenced the operation of the  
30 property, whichever is later; or (4) the landlord and tenant voluntarily  
31 enter into a valid written lease in good faith with respect to any hous-  
32 ing accommodation, which lease provides for an increase in the maximum  
33 rent not in excess of fifteen per centum and for a term of not less than  
34 two years, except that where such lease provides for an increase in  
35 excess of fifteen per centum, the increase shall be automatically  
36 reduced to fifteen per centum; or (5) the landlord and tenant by mutual  
37 voluntary written agreement agree to a substantial increase or decrease  
38 in dwelling space or a change in the services, furniture, furnishings or  
39 equipment provided in the housing accommodations; provided that an owner  
40 shall be entitled to a rent increase where there has been a substantial  
41 modification or increase of dwelling space or an increase in the  
42 services, or installation of new equipment or improvements or new furni-  
43 ture or furnishings provided in or to a tenant's housing accommodation.  
44 The permanent increase in the maximum rent for the affected housing  
45 accommodation shall be one-fortieth, in the case of a building with  
46 thirty-five or fewer housing accommodations, or one-sixtieth, in the  
47 case of a building with more than thirty-five housing accommodations  
48 where such permanent increase takes effect on or after September twen-  
49 ty-fourth, two thousand eleven, of the total cost incurred by the land-  
50 lord in providing such modification or increase in dwelling space,  
51 services, furniture, furnishings or equipment, including the cost of  
52 installation, but excluding finance charges provided further that an  
53 owner who is entitled to a rent increase pursuant to this clause shall  
54 not be entitled to a further rent increase based upon the installation  
55 of similar equipment, or new furniture or furnishings within the useful  
56 life of such new equipment, or new furniture or furnishings. The owner

1 shall give written notice to the commission of any such adjustment  
2 pursuant to this clause; or (6) there has been, since March first, nine-  
3 teen hundred fifty, an increase in the rental value of the housing  
4 accommodations as a result of a substantial rehabilitation of the build-  
5 ing or housing accommodation therein which materially adds to the value  
6 of the property or appreciably prolongs its life, excluding ordinary  
7 repairs, maintenance and replacements; or (7) (I) COLLECTION OF  
8 SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSUANT TO ITEM (II) OF THIS  
9 CLAUSE SHALL CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR  
10 CAPITAL IMPROVEMENT; (II) there has been since March first, nineteen  
11 hundred fifty, a major capital improvement [required for the operation,  
12 preservation or maintenance of the structure; which for any order of the  
13 commissioner issued after the effective date of the rent act of 2015 the  
14 cost of such improvement shall be amortized over an eight-year period  
15 for buildings with thirty-five or fewer units or a nine year period for  
16 buildings with more than thirty-five units,]; PROVIDED THAT THE COMMIS-  
17 SIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE  
18 INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE OPERA-  
19 TION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE INCREASE PERMIT-  
20 TED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY  
21 SURCHARGE TO THE MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED AND  
22 BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT TO  
23 THE MAXIMUM RENT. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN  
24 AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR,  
25 DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY  
26 THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLO-  
27 CABLE TO ANY APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO  
28 SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APART-  
29 MENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID  
30 SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A  
31 FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE  
32 YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE  
33 BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY; or (8)  
34 there has been since March first, nineteen hundred fifty, in structures  
35 containing more than four housing accommodations, other improvements  
36 made with the express consent of the tenants in occupancy of at least  
37 seventy-five per centum of the housing accommodations, provided, howev-  
38 er, that no adjustment granted hereunder shall exceed fifteen per centum  
39 unless the tenants have agreed to a higher percentage of increase, as  
40 herein provided; or (9) there has been, since March first, nineteen  
41 hundred fifty, a subletting without written consent from the landlord or  
42 an increase in the number of adult occupants who are not members of the  
43 immediate family of the tenant, and the landlord has not been compen-  
44 sated therefor by adjustment of the maximum rent by lease or order of  
45 the commission or pursuant to the federal act; or (10) the presence of  
46 unique or peculiar circumstances materially affecting the maximum rent  
47 has resulted in a maximum rent which is substantially lower than the  
48 rents generally prevailing in the same area for substantially similar  
49 housing accommodations.

50 S 7. This act shall take effect immediately; provided that the amend-  
51 ments to section 26-405 of the city rent and rehabilitation law made by  
52 sections one and two of this act shall remain in full force and effect  
53 only so long as the public emergency requiring the regulation and  
54 control of residential rents and evictions continues, as provided in  
55 subdivision 3 of section 1 of the local emergency housing rent control  
56 act; and provided further that the amendments to section 26-511 of the

1 rent stabilization law of nineteen hundred sixty-nine made by sections  
2 three and four of this act shall expire on the same date as such law  
3 expires and shall not affect the expiration of such law as provided  
4 under section 26-520 of such law, as from time to time amended; and  
5 provided further that the amendment to section 6 of the emergency tenant  
6 protection act of nineteen seventy-four made by section five of this act  
7 shall expire on the same date as such act expires and shall not affect  
8 the expiration of such act as provided in section 17 of chapter 576 of  
9 the laws of 1974, as from time to time amended; and further provided  
10 that the amendment to section 4 of the emergency housing rent control  
11 law made by section six of this act shall expire on the same date as  
12 such law expires and shall not affect the expiration of such law as  
13 provided in subdivision 2 of section 1 of chapter 274 of the laws of  
14 1946.