STATE OF NEW YORK

662

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL, LUPARDO, JAFFEE, WEPRIN -- Multi-Sponsored by -- M. of A. BENEDETTO, ENGLEBRIGHT, GOTTFRIED, GUNTHER, PERRY -- read once and referred to the Committee on Housing

AN ACT to amend the public housing law, the public health law, and the real property law, in relation to the remediation and prevention of indoor mold and requiring the disclosure of indoor mold history upon the sale of certain real property; and to amend the real property law and the administrative code of the city of New York, in relation to requiring notice of indoor mold history to prospective lessees of apartments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public housing law is amended by adding a new section 16-a to read as follows:

§ 16-a. Powers and duties of the commissioner with respect to indoor mold. 1. Definitions. For purposes of this section, the following terms shall have the following meanings:

(a) "Mold" means any form of multicellular fungi that live on plant or animal matter and in indoor environments. Types of mold include, but are not limited to, cladosporium, penicillium, alternaria, aspergillus, fusarium, trichoderma, memnoniella, mucor, and stachybotrys chartarum, often found in water damaged building materials.

(b) "Affect" means to cause a condition by the presence of mold in the dwelling unit, building, appurtenant structure, common wall, heating system, or ventilating and air conditioning system that affects the indoor air quality of a dwelling unit or building.

(c) "Acceptable exposure limit" means a level of mold that will not adversely affect the health of residents of public housing units, and does not pose a significant threat to the public health.

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

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2. Procedures for the remediation and prevention of mold in public housing. The commissioner is hereby directed and authorized to create procedures for the remediation and prevention of mold in public housing. Such procedures shall include:

(a) A visual survey of public housing units to check for evidence of water damage and the extent of mold growth, including an inspection of the following:

(1) Any defects in construction that may cause moisture such as defects in windows, roofs, or exterior siding, or improperly laid foundations, or the absence of vapor barriers.

(2) Plumbing leaks.

(3) Floor areas under carpeting.

(4) Spaces under buildings and living areas, and ceiling spaces.

(5) Cold corners of rooms which lack proper insulation and are susceptible to mold growth.

(6) Any other moisture damage, water intrusion, or leaks and rot in wall cavities of public housing spaces.

(b) A protocol for the remediation of existing mold in public housing, including standards relating to an acceptable exposure limit, including compliance to such an acceptable exposure limit. Such protocol shall include the following:

(1) Guidelines for the remediation of indoor mold which shall include precautions to protect the health of residents of public housing and overall public health, including preventative measures to ensure that contamination does not leave the affected area.

(2) The utilization of tools, instruments and remediation methods which are acceptable by the professional community engaged in the remediation of mold.

(3) The utilization of protective gear and equipment to ensure the health and safety of persons performing the remediation.

(4) The development of a list of professional companies engaged in the business of the remediation of mold, or other toxic substances, which shall be available for contracting with the department for the remediation of indoor mold in public housing. Such professional companies shall be assessed according to the technological and economic feasibility of contracting with such companies, and according to their success in the identification, remediation and removal of toxic mold.

(c) Methods to prevent the return of mold in areas which have been cleaned, and construction methods to prevent mold growth in new public housing facilities. With respect to the prevention of mold growth in new public housing units, the department shall develop construction methods which will best ensure the prevention of mold according to scientifically recognized entities in the field of environmental health and safety.

§ 2. The public health law is amended by adding a new article 48-A to read as follows:

ARTICLE 48-A

REMEDIATION OF INDOOR MOLD

Section 4809. Powers and duties of the commissioner with respect to indoor mold.

§ 4809. Powers and duties of the commissioner with respect to indoor mold. 1. Definitions. For purposes of this section, the following terms shall have the following meanings:

(a) "Mold" means any form of multicellular fungi that live on plant or animal matter and in indoor environments. Types of mold include, but are not limited to, cladosporium, penicillium, alternaria, aspergillus,

fusarium, trichoderma, memnoniella, mucor, and stachybotrys chartarum, often found in water damaged building materials.

(b) "Affect" means to cause a condition by the presence of mold in the dwelling unit, building, appurtenant structure, common wall, heating system, or ventilating and air conditioning system that affects the indoor air quality of a dwelling unit or building.

(c) "Acceptable exposure limit" means a level of mold that will not adversely affect the health of occupants, and does not pose a significant threat to the public health.

2. Standards for the remediation and prevention of mold. The commissioner, or his or her designated representative, is hereby authorized and directed to promulgate standards for the detection, prevention, and remediation of mold growth in indoor environments which are subject to the rules and regulations of the department, including workplaces, public facilities, and other establishments under the jurisdiction of the department. Such standards shall include guidelines relating to the following:

(a) The inspection of indoor spaces for the presence of mold growth and water damage.

(b) An acceptable exposure limit, including standards relating to compliance with such an acceptable exposure limit.

(c) Protocol for the removal and remediation of existing indoor mold.

(d) Methods to prevent the return of mold in areas which have been cleaned, and construction methods to prevent mold growth in new buildings.

3. Consultation with related experts. In effectuating the purposes of this section, the commissioner, or his or her designated representative, shall consult with scientifically recognized entities in the field of environmental health and safety, and related authoritative bodies in the field of remediation of mold and other toxic substances.

§ 3. Subdivision 2 of section 462 of the real property law, as added by chapter 456 of the laws of 2001, is amended to read as follows:

2. The following shall be the disclosure form:

PROPERTY CONDITION DISCLOSURE STATEMENT

NAME OF SELLER OR SELLERS:

PROPERTY ADDRESS:

THE PROPERTY CONDITION DISCLOSURE ACT REQUIRES THE SELLER OF RESIDENTIAL REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.

PURPOSE OF STATEMENT: THIS IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR TESTS AND THE BUYER IS ENCOURAGED TO OBTAIN HIS OR HER OWN INDEPENDENT PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE. IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY PRESCRIBED IN THIS ARTICLE TO DELIVER A DISCLOSURE STATEMENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE, THE BUYER SHALL RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF FIVE HUNDRED DOLLARS AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.

"RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY IMPROVED BY A ONE TO FOUR FAMILY DWELLING USED OR OCCUPIED, OR INTENDED TO BE USED OR OCCU-

PIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS, BUT SHALL NOT REFER TO (A) UNIMPROVED REAL PROPERTY UPON WHICH SUCH DWELLINGS ARE TO BE CONSTRUCTED OR (B) CONDOMINIUM UNITS OR COOPERATIVE APARTMENTS OR (C) PROPERTY ON A HOMEOWNERS' ASSOCIATION THAT IS NOT OWNED IN FEE SIMPLE BY THE SELLER.

INSTRUCTIONS TO THE SELLER:

(a) ANSWER ALL QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.

(b) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED.

(c) COMPLETE THIS FORM YOURSELF.

(d) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-APPLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

SELLER'S STATEMENT: THE SELLER MAKES THE FOLLOWING REPRESENTATIONS TO THE BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGNING THIS DOCUMENT. THE SELLER AUTHORIZES HIS OR HER AGENT, IF ANY, TO PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER OF THE RESIDENTIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT.

GENERAL INFORMATION

1. HOW LONG HAVE YOU OWNED THE PROPERTY?
2. HOW LONG HAVE YOU OCCUPIED THE PROPERTY?
3. WHAT IS THE AGE OF THE STRUCTURE OR STRUCTURES? NOTE TO BUYER--IF THE STRUCTURE WAS BUILT BEFORE 1978 YOU ARE ENCOURAGED TO INVESTIGATE FOR THE PRESENCE OF LEAD BASED PAINT.
4. DOES ANYBODY OTHER THAN YOURSELF HAVE A LEASE, EASEMENT OR ANY OTHER RIGHT TO USE OR OCCUPY ANY PART OF YOUR PROPERTY OTHER THAN THOSE STATED IN DOCUMENTS AVAILABLE IN THE PUBLIC RECORD, SUCH AS RIGHTS TO USE A ROAD OR PATH OR CUT TREES OR CROPS. YES NO UNKN NA
5. DOES ANYBODY ELSE CLAIM TO OWN ANY PART OF YOUR PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
6. HAS ANYONE DENIED YOU ACCESS TO THE PROPERTY OR MADE A FORMAL LEGAL CLAIM CHALLENGING YOUR TITLE TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
7. ARE THERE ANY FEATURES OF THE PROPERTY SHARED IN COMMON WITH ADJOINING LAND OWNERS OR A HOMEOWNERS ASSOCIATION, SUCH AS WALLS, FENCES OR DRIVEWAYS? YES NO UNKN NA (IF YES DESCRIBE BELOW)
8. ARE THERE ANY ELECTRIC OR GAS UTILITY SURCHARGES FOR LINE EXTENSIONS, SPECIAL ASSESSMENTS OR HOMEOWNER OR OTHER ASSOCIATION FEES THAT APPLY TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
9. ARE THERE CERTIFICATES OF OCCUPANCY RELATED TO THE PROPERTY? YES NO UNKN NA (IF NO, EXPLAIN BELOW)

ENVIRONMENTAL

NOTE TO SELLER - IN THIS SECTION, YOU WILL BE ASKED QUESTIONS REGARDING PETROLEUM PRODUCTS AND HAZARDOUS OR TOXIC SUBSTANCES THAT YOU KNOW TO HAVE BEEN SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY. PETROLEUM PRODUCTS MAY INCLUDE, BUT ARE NOT LIMITED TO, GASOLINE, DIESEL FUEL, HOME HEATING FUEL, AND LUBRICANTS. HAZARDOUS OR TOXIC SUBSTANCES ARE PRODUCTS **OR OTHER MATERIAL** THAT COULD POSE SHORT- OR LONG-TERM DANGER TO PERSONAL HEALTH OR THE ENVIRONMENT IF THEY ARE NOT PROPERLY DISPOSED OF, APPLIED OR STORED. THESE INCLUDE, BUT ARE NOT LIMITED TO, FERTILIZERS, PESTICIDES AND INSECTICIDES, PAINT INCLUDING PAINT THINNER, VARNISH REMOVER AND WOOD PRESERVATIVES, TREATED WOOD, CONSTRUCTION MATERIALS SUCH AS

ASPHALT AND ROOFING MATERIALS, ANTIFREEZE AND OTHER AUTOMOTIVE PRODUCTS, BATTERIES, CLEANING SOLVENTS INCLUDING SEPTIC TANK CLEANERS, HOUSEHOLD CLEANERS [~~AND~~], POOL CHEMICALS [~~AND~~], PRODUCTS CONTAINING MERCURY AND LEAD **AND INDOOR MOLD**.

NOTE TO BUYER - IF CONTAMINATION OF THIS PROPERTY FROM PETROLEUM PRODUCTS AND/OR HAZARDOUS OR TOXIC SUBSTANCES IS A CONCERN TO YOU, YOU ARE URGED TO CONSIDER SOIL AND GROUNDWATER TESTING OF THIS PROPERTY.

10. IS ANY OR ALL OF THE PROPERTY LOCATED IN A DESIGNATED FLOODPLAIN? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
11. IS ANY OR ALL OF THE PROPERTY LOCATED IN A DESIGNATED WETLAND? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
12. IS THE PROPERTY LOCATED IN AN AGRICULTURAL DISTRICT? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
13. WAS THE PROPERTY EVER THE SITE OF A LANDFILL? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
14. ARE THERE OR HAVE THERE EVER BEEN FUEL STORAGE TANKS ABOVE OR BELOW THE GROUND ON THE PROPERTY? YES NO UNKN NA IF YES, ARE THEY CURRENTLY IN USE? YES NO UNKN NA LOCATION(S) ARE THEY LEAKING OR HAVE THEY EVER LEAKED? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
15. IS THERE ASBESTOS IN THE STRUCTURE? YES NO UNKN NA (IF YES, STATE LOCATION OR LOCATIONS BELOW)
16. IS LEAD PLUMBING PRESENT? YES NO UNKN NA (IF YES, STATE LOCATION OR LOCATIONS BELOW)
17. HAS A RADON TEST BEEN DONE? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE REPORT)
18. HAS MOTOR FUEL, MOTOR OIL, HOME HEATING FUEL, LUBRICATING OIL OR ANY OTHER PETROLEUM PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR TOXIC SUBSTANCE SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY? YES NO UNKN NA (IF YES, DESCRIBE BELOW)
19. HAS THE PROPERTY BEEN TESTED FOR THE PRESENCE OF MOTOR FUEL, MOTOR OIL, HOME HEATING FUEL, LUBRICATING OIL, OR ANY OTHER PETROLEUM PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR TOXIC SUBSTANCE? YES NO UNKN NA (IF YES, ATTACH REPORT(S))

19-a. HAS THE PROPERTY BEEN TESTED FOR INDOOR MOLD? YES NO UNKN (IF YES, ATTACH A COPY OF THE REPORT)

19-b. IS THERE INDOOR MOLD ON THE PROPERTY PRESENTLY? (IF YES, STATE LOCATION OR LOCATIONS BELOW)

STRUCTURAL

20. IS THERE ANY ROT OR WATER DAMAGE TO THE STRUCTURE OR STRUCTURES? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
21. IS THERE ANY FIRE OR SMOKE DAMAGE TO THE STRUCTURE OR STRUCTURES? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
22. IS THERE ANY TERMITE, INSECT, RODENT OR PEST INFESTATION OR DAMAGE? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
23. HAS THE PROPERTY BEEN TESTED FOR TERMITE, INSECT, RODENT OR PEST INFESTATION OR DAMAGE? YES NO UNKN NA (IF YES, PLEASE ATTACH REPORT(S))
24. WHAT IS THE TYPE OF ROOF/ROOF COVERING (SLATE, ASPHALT, OTHER.)? ANY KNOWN MATERIAL DEFECTS? HOW OLD IS THE ROOF? IS THERE A TRANSFERABLE WARRANTEE ON THE ROOF IN EFFECT NOW? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

25. ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING STRUCTURAL SYSTEMS: FOOTINGS, BEAMS, GIRDERS, LINTELS, COLUMNS OR PARTITIONS. YES NO UNKN NA (IF YES, EXPLAIN BELOW)

MECHANICAL SYSTEMS & SERVICES

26. WHAT IS THE WATER SOURCE (CIRCLE ALL THAT APPLY - WELL, PRIVATE, MUNICIPAL, OTHER)? IF MUNICIPAL, IS IT METERED? YES NO UNKN NA
27. HAS THE WATER QUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA (IF YES, DESCRIBE BELOW)
28. WHAT IS THE TYPE OF SEWAGE SYSTEM (CIRCLE ALL THAT APPLY - PUBLIC SEWER, PRIVATE SEWER, SEPTIC OR CESSPOOL)? IF SEPTIC OR CESSPOOL, AGE? _____ DATE LAST PUMPED? _____ FREQUENCY OF PUMPING? _____ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
29. WHO IS YOUR ELECTRIC SERVICE PROVIDER? _____ WHAT IS THE AMPERAGE? _____ DOES IT HAVE CIRCUIT BREAKERS OR FUSES? _____ PRIVATE OR PUBLIC POLES? _____ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
30. ARE THERE ANY FLOODING, DRAINAGE OR GRADING PROBLEMS THAT RESULTED IN STANDING WATER ON ANY PORTION OF THE PROPERTY? YES NO UNKN NA (IF YES, STATE LOCATIONS AND EXPLAIN BELOW)
31. DOES THE BASEMENT HAVE SEEPAGE THAT RESULTS IN STANDING WATER? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING (IF YES, EXPLAIN BELOW. USE ADDITIONAL SHEETS IF NECESSARY.):

32. PLUMBING SYSTEM? YES NO UNKN NA
33. SECURITY SYSTEM? YES NO UNKN NA
34. CARBON MONOXIDE DETECTOR? YES NO UNKN NA
35. SMOKE DETECTOR? YES NO UNKN NA
36. FIRE SPRINKLER SYSTEM? YES NO UNKN NA
37. SUMP PUMP? YES NO UNKN NA
38. FOUNDATION/SLAB? YES NO UNKN NA
39. INTERIOR WALLS/CEILINGS? YES NO UNKN NA
40. EXTERIOR WALLS OR SIDING? YES NO UNKN NA
41. FLOORS? YES NO UNKN NA
42. CHIMNEY/FIREPLACE OR STOVE? YES NO UNKN NA
43. PATIO/DECK? YES NO UNKN NA
44. DRIVEWAY? YES NO UNKN NA
45. AIR CONDITIONER? YES NO UNKN NA
46. HEATING SYSTEM? YES NO UNKN NA
47. HOT WATER HEATER? YES NO UNKN NA
48. THE PROPERTY IS LOCATED IN THE FOLLOWING SCHOOL DISTRICT UNKN

NOTE: BUYER IS ENCOURAGED TO CHECK PUBLIC RECORDS CONCERNING THE PROPERTY (E.G. TAX RECORDS AND WETLAND AND FLOOD PLAIN MAPS)

THE SELLER SHOULD USE THIS AREA TO FURTHER EXPLAIN ANY ITEM ABOVE. IF NECESSARY, ATTACH ADDITIONAL PAGES AND INDICATE HERE THE NUMBER OF ADDITIONAL PAGES ATTACHED.

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SELLER'S CERTIFICATION: SELLER CERTIFIES THAT THE INFORMATION IN THIS PROPERTY CONDITION DISCLOSURE STATEMENT IS TRUE AND COMPLETE TO THE SELLER'S ACTUAL KNOWLEDGE AS OF THE DATE SIGNED BY THE SELLER. IF A SELLER OF RESIDENTIAL REAL PROPERTY ACQUIRES KNOWLEDGE WHICH RENDERS MATERIALLY INACCURATE A PROPERTY CONDITION DISCLOSURE STATEMENT PROVIDED

PREVIOUSLY, THE SELLER SHALL DELIVER A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER AS SOON AS PRACTICABLE. IN NO EVENT, HOWEVER, SHALL A SELLER BE REQUIRED TO PROVIDE A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT AFTER THE TRANSFER OF TITLE FROM THE SELLER TO THE BUYER OR OCCUPANCY BY THE BUYER, WHICHEVER IS EARLIER.

SELLER_____ DATE_____

SELLER_____ DATE_____

BUYER'S ACKNOWLEDGMENT: BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS STATEMENT AND BUYER UNDERSTANDS THAT THIS INFORMATION IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR SELLER'S AGENT AND IS NOT A SUBSTITUTE FOR ANY HOME, PEST, RADON OR OTHER INSPECTIONS OR TESTING OF THE PROPERTY OR INSPECTION OF THE PUBLIC RECORDS.

BUYER_____ DATE_____

BUYER_____ DATE _____

§ 4. The real property law is amended by adding a new section 235-h to read as follows:

§ 235-h. Notice of indoor mold and remediation history. 1. All prospective lessees shall be furnished with a notice, in a form promulgated or approved by the state division of housing and community renewal, that sets forth the property's indoor mold and remediation history.

2. Information shall include any history of indoor mold and remediation, if any, of the premises to be rented by the prospective lessee and the building in which the premises are located.

§ 5. The administrative code of the city of New York is amended by adding a new section 27-2009.3 to read as follows:

§ 27-2009.3 Notice of indoor mold and remediation history. For housing accommodations subject to this code, an owner shall furnish to all prospective lessees, a notice in a form promulgated or approved by the state division of housing and community renewal that sets forth the property's history of indoor mold and the remediation, if any, regarding the premises to be rented by the prospective lessee and the building in which the premises are located.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that section three of this act shall apply to contracts of sale for real property entered into on or after such effective date; and provided further, however, that effective immediately the commissioner of housing and community renewal and the commissioner of health, in consultation with each other, are hereby authorized and directed to promulgate any rules and regulations necessary for the implementation of this act on or before its effective date.