

STATE OF NEW YORK

3655--B

2019-2020 Regular Sessions

IN SENATE

February 11, 2019

Introduced by Sens. SALAZAR, HOYLMAN, RIVERA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law, in relation to interim multiple dwellings; and to amend chapter 4 of the laws of 2013 amending the real property tax law and other laws relating to interim multiple dwellings in a city with a population of one million or more, in relation to making certain provisions permanent

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

1 Section 1. Subdivision 5 of section 281 of the multiple dwelling law,
2 as amended by chapter 4 of the laws of 2013, is amended to read as
3 follows:

4 5. (a) Notwithstanding the provisions of paragraphs (i), (iii) and
5 (iv) of subdivision two of this section, but subject to paragraphs (i)
6 and (ii) of subdivision one of this section and paragraph (ii) of subdi-
7 vision two of this section, the term "interim multiple dwelling" shall
8 include buildings, structures or portions thereof that are located in a
9 city of more than one million persons which were occupied for residen-
10 tial purposes as the residence or home of any three or more families
11 living independently from one another for a period of twelve consecutive
12 months during the period commencing January first, two thousand eight,
13 and ending December thirty-first, two thousand nine, provided that the
14 unit seeking coverage: is not located in a [~~basement or~~] cellar and has
15 at least one entrance that does not require passage through another
16 residential unit to obtain access to the unit, [~~has at least one window~~
17 ~~opening onto a street or a lawful yard or court as defined in the zoning~~

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

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1 ~~resolution for such municipality,~~] and is at least four hundred square
2 feet in area.

3 (b) The term "interim multiple dwelling" as used in this subdivision
4 shall not include (i) any building in an industrial business zone estab-
5 lished pursuant to chapter six-D of title twenty-two of the administra-
6 tive code of the city of New York except that a building in the
7 Williamsburg/Greenpoint or North Brooklyn industrial business zones
8 (other than a building within such North Brooklyn business zone that is
9 in a district zoned M3, as such district is described in the zoning
10 resolution of such municipality in effect at the time the application
11 for registration as an interim multiple dwelling or for coverage of
12 residential units under this article is filed) and a building located in
13 that portion of the Long Island city industrial business zone that has
14 frontage on either side of forty-seventh avenue or is located north of
15 forty-seventh avenue and south of Skillman avenue or in that portion of
16 the Long Island city industrial business zone that is located north of
17 forty-fourth drive, south of Queens plaza north, and west of twenty-
18 third street may be included in the term "interim multiple dwelling," or
19 (ii) units in any building, other than a building that is already
20 defined as an "interim multiple dwelling" pursuant to subdivision one,
21 two, three or four of this section, that, at the time this subdivision
22 shall take effect and continuing ~~at~~ until the time of the submission
23 of an application for coverage by any party, also contains a use in
24 legal operation, actively and currently pursued, which use is set forth
25 in use ~~[groups fifteen through]~~ group eighteen, as described in the
26 zoning resolution of such municipality in effect on June twenty-first,
27 two thousand ten, and which the loft board has determined in rules and
28 regulation is inherently incompatible with residential use in the same
29 building by creating an actual risk of harm which cannot be reasonably
30 mitigated, provided that the loft board may by rule exempt categories of
31 units or buildings from such use incompatibility determinations includ-
32 ing but not limited to residentially occupied units or subcategories of
33 such units, and provided, further that if a building does not contain
34 such active uses at the time this subdivision takes effect, no subse-
35 quent use by the owner of the building shall eliminate the protections
36 of this section for any residential occupants in the building already
37 qualified for such protections. A party opposing coverage pursuant to
38 this subdivision shall bear the burden of proving the exception to
39 coverage set forth in subparagraph (ii) of this paragraph.

40 (c) The term "interim multiple dwelling," as used in this subdivision
41 shall also include buildings, structures or portions thereof that are
42 located north of West 24th Street and south of West 27th Street and west
43 of tenth avenue and east of eleventh avenue in a city of more than one
44 million persons which were occupied for residential purposes as the
45 residence or home of any two or more families living independently from
46 one another for a period of twelve consecutive months during the period
47 commencing January first, two thousand eight, and ending December thir-
48 ty-first, two thousand nine and subject to all the conditions and limi-
49 tations of this subdivision other than the number of units in the build-
50 ing. A reduction in the number of occupied residential units in a
51 building after meeting the aforementioned twelve consecutive month
52 requirement shall not eliminate the protections of this section for any
53 remaining residential occupants qualified for such protections. Non-re-
54 sidential space in a building as of the effective date of this subdivi-
55 sion shall be offered for residential use only after the obtaining of a
56 residential certificate of occupancy for such space and such space shall

1 be exempt from this article, even if a portion of such building may be
2 an interim multiple dwelling.

3 § 2. Section 281 of the multiple dwelling law is amended by adding a
4 new subdivision 6 to read as follows:

5 6. (a) Notwithstanding the provisions of paragraphs (i), (iii) and
6 (iv) of subdivision two of this section, but subject to paragraphs (i)
7 and (ii) of subdivision one of this section and paragraph (ii) of subdivi-
8 sion two of this section, the term "interim multiple dwelling" shall
9 include buildings, structures or portions thereof that are located in a
10 city of more than one million persons which were occupied for residen-
11 tial purposes as the residence or home of any three or more families
12 living independently from one another for a period of twelve consecutive
13 months during the period commencing January first, two thousand fifteen,
14 and ending December thirty-first, two thousand sixteen, provided that
15 the unit seeking coverage: is not located in a cellar and has at least
16 one entrance that does not require passage through another residential
17 unit to obtain access to the unit, and is at least four hundred square
18 feet in area.

19 (b) The term "interim multiple dwelling" as used in this subdivision
20 shall not include (i) any building in an industrial business zone estab-
21 lished pursuant to chapter six-D of title twenty-two of the administra-
22 tive code of the city of New York except that a building in the
23 Williamsburg/Greenpoint or North Brooklyn industrial business zones
24 other than a building within such North Brooklyn industrial business
25 zone that is in a district zoned M3, as such district is described in
26 the zoning resolution of such municipality in effect at the time the
27 application for registration as an interim multiple dwelling or for
28 coverage of residential units under this article is filed) and a build-
29 ing located in that portion of the Long Island city industrial business
30 zone that has frontage on either side of forty-seventh avenue or is
31 located north of forty-seventh avenue and south of Skillman avenue or in
32 that portion of the Long Island city industrial business zone that is
33 located north of forty-fourth drive, south of Queens plaza north, and
34 west of twenty-third street may be included in the term "interim multi-
35 ple dwelling", or (ii) units in any building, other than a building that
36 is already defined as an "interim multiple dwelling" pursuant to subdivi-
37 sion one, two, three, four or five of this section, that, at the time
38 this subdivision shall take effect and continuing until the time of the
39 submission of an application for coverage by any party, also contains a
40 use in legal operation, actively and currently pursued, which use is set
41 forth in use group eighteen, as described in the zoning resolution of
42 such municipality in effect on June twenty-first, two thousand ten, and
43 which the loft board has determined in rules and regulation is inherent-
44 ly incompatible with residential use in the same building by creating an
45 actual risk of harm which cannot be reasonably mitigated, provided that
46 the loft board may by rule exempt categories of units or buildings from
47 such use incompatibility determinations including but not limited to
48 residentially occupied units or subcategories of such units, and
49 provided, further that if a building does not contain such active uses
50 at the time this subdivision takes effect, no subsequent use by the
51 owner of the building shall eliminate the protections of this section
52 for any residential occupants in the building already qualified for such
53 protections. A party opposing coverage pursuant to this subdivision
54 shall bear the burden of proving the exception to coverage set forth in
55 subparagraph (ii) of this paragraph.

(c) The term "interim multiple dwelling", as used in this subdivision shall also include buildings, structures or portions thereof that are located north of West 24th Street and south of West 27th Street and west of tenth avenue and east of eleventh avenue in a city of more than one million persons which were occupied for residential purposes as the residence or home of any two or more families living independently from one another for a period of twelve consecutive months during the period commencing January first, two thousand fifteen, and ending December thirty-first, two thousand sixteen and subject to all the conditions and limitations of this subdivision other than the number of units in the building. A reduction in the number of occupied residential units in a building after meeting the aforementioned twelve consecutive month requirement shall not eliminate the protections of this section for any remaining residential occupants qualified for such protections. Non-residential space in a building as of the effective date of this subdivision shall be offered for residential use only after the obtaining of a residential certificate of occupancy for such space and such space shall be exempt from this article, even if a portion of such building may be an interim multiple dwelling.

§ 3. Section 282 of the multiple dwelling law, as amended by chapter 147 of the laws of 2010, is amended to read as follows:

§ 282. Establishment of special loft unit. 1. In order to resolve complaints of owners of interim multiple dwellings and of residential occupants of such buildings qualified for the protection of this article, and to act upon hardship applications made pursuant to this article, a special loft unit referred to herein as the "loft board" shall be established which shall consist of from four to nine members representative of the public, the real estate industry, loft residential tenants, and loft manufacturing interests, and a chairperson, all to be appointed by the mayor of the municipality and to serve such terms as he may designate. The compensation of the members of the loft board shall be fixed by the mayor. The members of the loft board shall not be considered employees of the state or the municipality, provided, however, that state or municipal employees or officers may be named to the loft board. The mayor shall establish the loft board within ninety days of the effective date of chapter three hundred forty-nine of the laws of nineteen hundred eighty-two. The loft board shall have such office and staff as shall be necessary to carry out functions conferred upon it and may request and receive assistance from any state or municipal agency or department. The loft board shall have the following duties: ~~(a)~~ (i) the determination of interim multiple dwelling status and other issues of coverage pursuant to this article; ~~(b)~~ (ii) the resolution of all hardship appeals brought under this article; ~~(c)~~ (iii) the determination of any claim for rent adjustment under this article by an owner or tenant; ~~(d)~~ (iv) the issuance, after a public hearing, and the enforcement of rules and regulations governing minimum housing maintenance standards in interim multiple dwellings (subject to the provisions of this chapter and any local building code), rent adjustments prior to legalization, compliance with this article and the hearing of complaints and applications made to it pursuant to this article; and ~~(e)~~ (v) determination of controversies arising over the fair market value of a residential tenant's fixtures or reasonable moving expenses.

2. The violation of any rule or regulation promulgated by the loft board shall be punishable by a civil penalty determined by the loft board not to exceed ~~seventeen thousand five hundred~~ twenty-five thousand dollars which may be recovered by the municipality by a proceeding

1 in any court of competent jurisdiction. The corporation counsel may
2 bring and maintain a civil proceeding in the name of the city in the
3 supreme court of the county in which the building, erection or place is
4 located to enjoin violations of this article. The loft board may desig-
5 nate provisions of such rules and regulations for enforcement in
6 proceedings before the environmental control board of such municipality.
7 Notices of violation returnable to such environmental control board may
8 be issued by officers and employees of the department of buildings of
9 such municipality and served in the same manner as violations returnable
10 to such board within the jurisdiction of such department. The environ-
11 mental control board, when acting as the designee of the loft board,
12 shall have the power to impose civil penalties, not to exceed [~~seven-~~
13 ~~teen~~] twenty-five thousand [~~five hundred~~] dollars for each violation,
14 and to issue judgments, which may be docketed and enforced as set forth
15 in section one thousand forty-nine-a of the New York city charter.

16 3. The loft board may charge and collect reasonable fees in the
17 execution of its responsibilities. The loft board may administer oaths,
18 take affidavits, hear testimony, and take proof under oath at public or
19 private hearings.

20 § 4. Section 282-a of the multiple dwelling law, as amended by section
21 22 of part A of chapter 20 of the laws of 2015, is amended to read as
22 follows:

23 § 282-a. Applications for coverage of interim multiple dwellings and
24 residential units. [~~1. All applications for registration as an interim~~
25 ~~multiple dwelling or for coverage of residential units under this arti-~~
26 ~~cle shall be filed with the loft board within six months after the date~~
27 ~~the loft board shall have adopted all rules or regulations necessary in~~
28 ~~order to implement the provisions of chapter one hundred forty-seven of~~
29 ~~the laws of two thousand ten, provided, however, that applications for~~
30 ~~registration as an interim multiple dwelling or for coverage of residen-~~
31 ~~tial units under this article may also be filed for a two-year period~~
32 ~~starting from the effective date of the chapter of the laws of two thou-~~
33 ~~sand fifteen which amended this section. The loft board may subsequently~~
34 ~~amend such rules and regulations but such amendments shall not recom-~~
35 ~~mence the time period in which applications may be filed.~~

36 2-] Where any occupant has filed an application for coverage pursuant
37 to this article and has received a docket number from the loft board, it
38 shall be unlawful for an owner to cause or intend to cause such occupant
39 to vacate, surrender or waive any rights in relation to such occupancy,
40 due to repeated interruptions or discontinuances of essential services,
41 or an interruption or discontinuance of an essential service for an
42 extended duration or of such significance as to substantially impair
43 habitability of such unit, at any time before the loft board has made a
44 final determination, including appeals, to approve or deny such applica-
45 tion. This section shall not grant any rights of continued occupancy
46 other than those otherwise granted by law. Any agreement that waives or
47 limits the benefits of this section shall be deemed void as against
48 public policy. In addition to any other remedies provided in this arti-
49 cle for failure to be in compliance, in article eight of this chapter,
50 or in the regulations promulgated by the loft board, an occupant who has
51 filed an application with the loft board for coverage under this article
52 may commence an action or proceeding in a court of competent jurisdic-
53 tion, which notwithstanding any other provision of law shall include the
54 housing part of the New York city civil court, to enforce the provisions
55 of this section.

§ 5. Paragraph (vi) of subdivision 1 of section 284 of the multiple dwelling law, as amended by section 22-a of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(vi) Notwithstanding the provisions of paragraphs (i) through (v) of this subdivision the owner of an interim multiple dwelling made subject to this article by subdivision five of section two hundred eighty-one of this article (A) shall file an alteration application on or before March twenty-first, two thousand eleven, or, for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before June eleventh, two thousand fourteen, or, for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within nine months from such effective date, or for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand fourteen, within nine months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier, and (B) shall take all reasonable and necessary action to obtain an approved alteration permit on or before June twenty-first, two thousand eleven, or, for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before September eleventh, two thousand fourteen, or, for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within twelve months from such effective date, or for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand fourteen, within twelve months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure on or before December twenty-first, two thousand twelve, or for units that became subject to this article pursuant to chapter four of the laws of two thousand thirteen on or before March eleventh, two thousand sixteen, or, for units that became subject to this article pursuant to the chapter of the laws of two thousand nineteen that amended this paragraph within thirty-six months from such effective date, or for units in an interim multiple dwelling that were listed on an application for coverage or registration filed with the loft board pursuant to this article or in a court pleading after March eleventh, two thousand sixteen, within thirty months of either the date of the initial application for coverage or the date of the loft board's issuance of an interim multiple dwelling number or the date of the service of the pleading, whichever is earlier. The loft board may, upon good cause shown, and upon proof of compliance with the standards of safety and fire protection set forth in article seven-B of this chapter, twice extend the time of compliance with the requirement to obtain a residential certificate of occupancy for periods not to exceed twelve months each.

§ 6. Paragraphs (vii), (viii), (ix), (x) and (xi) of subdivision 1 and subdivision 2 of section 284 of the multiple dwelling law, paragraphs (vii), (viii), (ix), (x) and (xi) of subdivision 1 as amended by chapter 135 of the laws of 2010 and subdivision 2 as added by chapter 349 of the laws of 1982, are amended to read as follows:

(vii) Notwithstanding the provisions of paragraphs (i) through (vi) of this subdivision the owner of an interim multiple dwelling made subject to this article by subdivision six of section two hundred eighty-one of this article (A) shall file an alteration application within nine months from the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, and (B) shall take all reasonable and necessary action to obtain an approved alteration permit within twelve months from such effective date, and (C) shall achieve compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building within eighteen months from obtaining such alteration permit or eighteen months from such effective date, whichever is later, and (D) shall take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for the residential portions of the building or structure within thirty-six months from such effective date. The loft board may, upon good cause shown, and upon proof of compliance with the standards of safety and fire protection set forth in article seven-B of this chapter, twice extend the time of compliance with the requirement to obtain a residential certificate of occupancy for periods not to exceed twelve months each.

(viii) An owner who is unable to satisfy any requirement specified in paragraph (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision for reasons beyond his/her control, including, but not limited to, a requirement to obtain a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from a board of standards and appeals, or the denial of reasonable access to a residential unit as required by paragraph ~~[(xii)]~~ (xii) of this subdivision, may apply to the loft board for an extension of time to meet the requirement specified in paragraph (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision. The loft board may grant an extension of time to meet a requirement specified in paragraph (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision provided that the owner demonstrates that he/she has made good faith efforts to satisfy the requirements.

~~[(viii)]~~ (ix) If there is a finding by the loft board that an owner has failed to satisfy any requirement specified in paragraph (i), (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision, such owner shall be subject to all penalties set forth in article eight of this chapter.

~~[(ix)]~~ (x) In addition to the penalties provided in article eight of this chapter, if there is a finding by the loft board that an owner has failed to satisfy any requirement specified in paragraph (i), (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision, a court may order specific performance to enforce the provisions of this article upon the application of three occupants of separate residential units, qualified for the protection of this article, or upon the application of the municipality.

~~[(x)]~~ (xi) If, as a consequence of an owner's unlawful failure to comply with the provisions of paragraph (i), (ii), (iii), (iv), (v), ~~[(vi)]~~ (vi), or (vii) of this subdivision, any residential occupant qualified for protection pursuant to this article is required to vacate his

1 or her unit as a result of a municipal vacate order, such occupant may
2 recover from the owner the fair market value of any improvements made by
3 such tenant and reasonable moving costs. Any vacate order issued as to
4 such unit by a local government shall be deemed an order to the owner to
5 correct the non-compliant conditions, subject to the provisions of this
6 article. Furthermore, when such correction has been made, such occupant
7 shall have the right to re-occupy his or her unit and shall be entitled
8 to all applicable tenant protections of this article.

9 ~~[(xi)]~~ (xii) The occupants of a building shall, upon appropriate
10 notice regarding the timing and scope of the work required, afford the
11 owner reasonable access to their units so that the work necessary for
12 compliance with this article can be carried out. Access shall also be
13 afforded, upon reasonable prior notice, for the purpose of inspecting
14 and surveying units as may be required to comply with the provisions of
15 this article and article seven-B of this chapter. Failure to comply with
16 an order of the loft board regarding access shall be grounds for
17 eviction of a tenant.

18 2. Every owner of an interim multiple dwelling, every lessee of a
19 whole building part of which is an interim multiple dwelling, and every
20 agent or other person having control of such a dwelling, shall, within
21 sixty days of the effective date of the act which added this article,
22 file with the loft board or any other authority designated by the mayor
23 a notice in conformity with all provisions of section three hundred
24 twenty-five of this chapter and with rules and regulations to be promul-
25 gated by the loft board.

26 § 7. Subparagraphs (A) and (B) of paragraph (ii) of subdivision 2 of
27 section 286 of the multiple dwelling law, as amended by chapter 4 of the
28 laws of 2013, are amended to read as follows:

29 (A) Upon the owners' filing of an alteration application, as required
30 by ~~[paragraph]~~ paragraphs (ii), (iii), (iv), (v), ~~[ex]~~ (vi), and (vii)
31 of subdivision one of section two hundred eighty-four of this article,
32 an adjustment equal to three percent of the rent in effect at the time
33 the owner files the alteration application.

34 (B) Upon obtaining an alteration permit, as required by ~~[paragraph]~~
35 paragraphs (ii), (iii), (iv), (v), ~~[ex]~~ (vi), and (vii) of subdivision
36 one of section two hundred eighty-four of this article, an adjustment
37 equal to three percent of the rent in effect at the time the owner
38 obtains the alteration permit.

39 § 8. Subdivisions (f), (g) and (h) of section 27 of chapter 4 of the
40 laws of 2013 amending the real property tax law and other laws relating
41 to interim multiple dwellings in a city with a population of one million
42 or more, subdivision (h) as amended by section 21 of part A of chapter
43 20 of the laws of 2015, are amended to read as follows:

44 (f) sections eighteen, nineteen and twenty of this act shall be deemed
45 to have been in full force and effect on and after June 1, 2011; and

46 (g) notwithstanding any inconsistent provision of this act, the amend-
47 ment to subdivision 5 of section 281 of the multiple dwelling law made
48 by section twenty-one of this act in relation to the authority of the
49 loft board to exempt categories or subcategories of units or buildings
50 by rule from determinations of inherently incompatible uses shall be
51 deemed to have been in force and effect on and after June 21, 2010 and
52 to authorize rules of the loft board promulgated after such date that
53 make such exemptions~~[, and~~

54 ~~(h) sections twenty-one, twenty-two, twenty-three and twenty-four~~
55 ~~shall expire and be deemed repealed on June 30, 2019].~~

1 § 9. With regards to occupied interim multiple dwellings or residen-
2 tial units with residential occupants as of the effective date of this
3 act and meeting the specified dates of eligibility, within the North
4 Brooklyn industrial business zones (other than a building within such
5 North Brooklyn industrial business zone that is in a district zoned M3,
6 as such district is described in the zoning resolution of such munici-
7 pality in effect at the time the application for registration as an
8 interim multiple dwelling or for coverage of residential units under
9 article 7-C of the multiple dwelling law, is filed), such applications
10 for registration as an interim multiple dwelling or for coverage of
11 residential units which were occupied for residential purposes as the
12 residence or home of any three or more families living independently
13 from one another for a period of twelve consecutive months pursuant to
14 subdivision 5 or 6 of section 281 of the multiple dwelling law shall be
15 filed with the loft board within nine months after the date the loft
16 board shall have adopted all rules or regulations necessary in order to
17 implement the provisions of this act. The loft board may subsequently
18 amend such rules and regulations but such amendments shall not recom-
19 mence the time period in which applications may be filed.

20 § 10. No provision of this act or article 7-C of the multiple dwelling
21 law, as amended by this act, or any other law or prior judgment, shall
22 be construed to prevent an application from being filed with the loft
23 board and considered by such board, or a claim in a court of competent
24 jurisdiction, for coverage or for registration as an interim multiple
25 dwelling or units within a building, including those previously deter-
26 mined not to be covered, where the basis for such application or claim
27 is that such building or units are subject to such article as a result
28 of the amendments made by this act.

29 § 11. This act shall take effect immediately, and shall apply to
30 applications pending approval or on appeal on and after such date.