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I N S E N A T E

May 12, 2010

Introduced by Sens. SCHNEIDERMAN, SAMPSON, HASSELL-THOMPSON, KLEIN, OPPENHEIMER, STEWART-COUSINS -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend chapter 367 of the laws of 1999, amending the civil practice law and rules and the judiciary law relating to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding, in relation to use of electronic means to commence an action or proceeding and to amend chapter 416 of the laws of 2009, amending the civil practice law and rules relating to service of papers by electronic means, in relation to service of papers by electronic means

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

1 Section 1. Subdivision (a) of section 6 of chapter 367 of the laws of
2 1999, amending the civil practice law and rules and the judiciary law,
3 relating to authorization of pilot programs permitting use of facsimile
4 transmission or electronic means to commence an action or special
5 proceeding, as amended by chapter 416 of the laws of 2009, is amended to
6 read as follows:
7 (a) Notwithstanding any other provision of law, the chief administra-
8 tor of the courts, with the approval of the administrative board of the
9 courts, may promulgate rules authorizing a program in the use of facsimile
10 transmission ONLY IN THE COURT OF CLAIMS and electronic means in the
11 supreme court, the civil court of the city of New York, surrogate's
12 courts and the court of claims, for: (i) the commencement of civil
13 actions and proceedings, and (ii) the filing and service of papers in
14 pending actions and proceedings. PROVIDED, HOWEVER, THE CHIEF ADMINIS-
15 TRATOR SHALL CONSULT WITH THE COUNTY CLERK OF A COUNTY BEFORE THE USE OF
16 ELECTRONIC MEANS IS TO BE AUTHORIZED IN SUCH COUNTY, AFFORD HIM OR HER
17 THE OPPORTUNITY TO SUBMIT COMMENTS WITH RESPECT THERETO AND CONSIDER ANY
18 SUCH COMMENTS.
19 S 2. Subparagraphs 2 and 3 of paragraph (B) of subdivision (b) of
20 section 6 of chapter 367 of the laws of 1999, amending the civil prac-

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

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1 tice law and rules and the judiciary law relating to authorization of
2 pilot programs permitting use of facsimile transmission or electronic
3 means to commence an action or special proceeding, as amended by chapter
4 416 of the laws of 2009, are amended to read as follows:

5 2. [Tort cases in supreme court in Westchester county, and

6 3.] One or more classes of cases (excluding matrimonial actions as
7 defined by the civil practice law and rules, election law proceedings,
8 proceedings brought pursuant to article 78 of the civil practice law and
9 rules, and proceedings brought pursuant to the mental hygiene law) in
10 [the] supreme court [of one county outside the city of New York] IN
11 LIVINGSTON, MONROE, ROCKLAND, TOMPKINS AND WESTCHESTER COUNTIES.

12 S 3. The closing paragraph of paragraph (B) of subdivision (b) of
13 section 6 of chapter 367 of the laws of 1999, amending the civil prac-
14 tice law and rules and the judiciary law relating to authorization of
15 pilot programs permitting use of facsimile transmission or electronic
16 means to commence an action or special proceeding, as amended by chapter
17 416 of the laws of 2009, is amended to read as follows:

18 Notwithstanding the foregoing, the chief administrator may not elimi-
19 nate the requirement of consent until after he or she shall have
20 consulted with members of the organized bar AND WITH THE COUNTY CLERK in
21 any county in which such elimination shall apply, have afforded them the
22 opportunity to submit comments with respect thereto, [and] have consid-
23 ered any such comments AND, IN THE INSTANCE OF THE COUNTIES SPECIFIED IN
24 SUBPARAGRAPH TWO OF THIS PARAGRAPH, HAVE OBTAINED THE AGREEMENT THERETO
25 OF THE RESPECTIVE COUNTY CLERKS THEREOF.

26 S 4. Section 6 of chapter 416 of the laws of 2009, amending the civil
27 practice law and rules relating to service of papers by electronic
28 means, is amended to read as follows:

29 S 6. (A) Not later than April [1, 2012] FIRST IN EACH CALENDAR YEAR,
30 COMMENCING IN THE YEAR 2011, the chief administrator of the courts shall
31 submit to the legislature, the governor and the chief judge of the state
32 a report evaluating the state's experience with the program in the use
33 of electronic means for the commencement of civil actions and
34 proceedings and the service of papers therein as authorized by this act
35 and containing such recommendations for further legislation as he or she
36 shall deem appropriate, INCLUDING, IN PARTICULAR, LEGISLATION TO ENABLE
37 BROADER USE OF THE PROGRAM WITHOUT THE REQUIREMENT OF CONSENT TO PARTIC-
38 IPATION IN THE COUNTY SPECIFIED IN SUBPARAGRAPH 1 OF PARAGRAPH (B) OF
39 SUBDIVISION (B) OF SECTION 6 OF CHAPTER 367 OF THE LAWS OF 1999, AMEND-
40 ING THE CIVIL PRACTICE LAW AND RULES AND THE JUDICIARY LAW, RELATING TO
41 THE AUTHORIZATION OF PILOT PROGRAMS PERMITTING THE USE OF FACSIMILE
42 TRANSMISSION OR ELECTRONIC MEANS TO COMMENCE AN ACTION OR SPECIAL
43 PROCEEDING, AS AMENDED, AND IN COUNTIES NOT NOW SPECIFIED IN SUBPARA-
44 GRAPH 2 OF SUCH PARAGRAPH (B). IN THE PREPARATION OF SUCH REPORT, THE
45 CHIEF ADMINISTRATOR SHALL CONSULT WITH EACH COUNTY CLERK IN WHOSE COUNTY
46 THE PROGRAM HAS BEEN IMPLEMENTED, AFFORD HIM OR HER AN OPPORTUNITY TO
47 SUBMIT COMMENTS WITH RESPECT TO SUCH IMPLEMENTATION FOR INCLUSION IN THE
48 REPORT AND CONSIDER ANY SUCH COMMENTS.

49 (B) THE CHIEF ADMINISTRATOR OF THE COURTS SHALL CREATE AN ADVISORY
50 COMMITTEE TO CONSULT WITH HIM OR HER IN THE IMPLEMENTATION OF THIS ACT
51 IN THE SUPREME COURT. THIS COMMITTEE SHALL CONSIST OF SUCH NUMBER OF
52 MEMBERS AS THE CHIEF ADMINISTRATOR SHALL DESIGNATE, NO FEWER THAN HALF
53 TO BE UPON THE RECOMMENDATION OF THE NEW YORK STATE ASSOCIATION OF COUN-
54 TY CLERKS.

55 S 5. This act shall take effect immediately and shall be deemed to
56 have been in full force and effect on and after September 1, 2009,

1 provided, however, that the amendments to paragraph (B) of subdivision
2 (b) of section 6 of chapter 367 of the laws of 1999 made by sections two
3 and three of this act shall not affect the expiration and repeal of such
4 paragraph and shall be deemed repealed therewith.