S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 6, 2010

Introduced by M. of A. WEINSTEIN, JOHN, ZEBROWSKI -- Multi-Sponsored by -- M. of A. GANTT, KOON, MORELLE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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; 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; and to amend chapter 457 of the laws of 2005 amending the judiciary law and other laws relating to use of credit cards to pay fees, fines and surcharges, in relation to making the provisions of such chapter permanent

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

Section 1. Subdivision (a) of section 6 of 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, as amended by chapter 416 of the laws of 2009, is amended to read as follows:

(a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission ONLY IN THE COURT OF CLAIMS and electronic means in the supreme court, the civil court of the city of New York, surrogate's courts and the court of claims, for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. PROVIDED, HOWEVER, THE CHIEF ADMINIS-

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

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TRATOR SHALL CONSULT WITH THE COUNTY CLERK OF A COUNTY BEFORE THE USE OF ELECTRONIC MEANS IS TO BE AUTHORIZED IN SUCH COUNTY, AFFORD HIM OR HER THE OPPORTUNITY TO SUBMIT COMMENTS WITH RESPECT THERETO AND CONSIDER ANY SUCH COMMENTS.

S 2. The first unnumbered paragraph of subparagraph 1 and subparagraph 3 of paragraph (B) of subdivision (b) of section 6 of 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, as amended by chapter 416 of the laws of 2009, are amended to read as follows:

The supreme court of New York [county] AND WESTCHESTER COUNTIES in the following classes of cases provided that the amount in controversy (exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed) is over $100,000:

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

S 3. The closing paragraph of paragraph (B) of subdivision (b) of section 6 of 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, as amended by chapter 416 of the laws of 2009, is amended to read as follows:

Notwithstanding the foregoing, the chief administrator may not eliminate the requirement of consent until after he or she shall have consulted with members of the organized bar AND WITH THE COUNTY CLERK in any county in which such elimination shall apply, have afforded them the opportunity to submit comments with respect thereto, [and] have considered any such comments AND, IN THE INSTANCE OF THE COUNTIES SPECIFIED IN SUBPARAGRAPH THREE OF THIS PARAGRAPH, HAVE OBTAINED THE AGREEMENT THERETO OF THE RESPECTIVE COUNTY CLERKS THEREOF.

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

S 6. (A) Not later than April [1, 2012] FIRST IN EACH CALENDAR YEAR, COMMENCING IN THE YEAR 2011, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with the program in the use of electronic means for the commencement of civil actions and proceedings and the service of papers therein as authorized by this act and containing such recommendations for further legislation as he or she shall deem appropriate, INCLUDING, IN PARTICULAR, LEGISLATION TO ENABLE BROADER USE OF THE PROGRAM WITHOUT THE REQUIREMENT OF CONSENT TO PARTICIPATION IN THE COUNTIES SPECIFIED IN SUBPARAGRAPHS 1 AND 2 OF PARAGRAPH (B) OF SUBDIVISION (B) OF SECTION 6 OF CHAPTER 367 OF THE LAWS OF 1999, AMENDING THE CIVIL PRACTICE LAW AND RULES AND THE JUDICIARY LAW, RELATING TO THE AUTHORIZATION OF PILOT PROGRAMS PERMITTING THE USE OF FACSIMILE TRANSMISSION OR ELECTRONIC MEANS TO COMMENCE AN ACTION OR SPECIAL PROCEEDING, AS AMENDED, AND IN COUNTIES NOT NOW SPECIFIED IN SUBPARAGRAPH 3 OF SUCH PARAGRAPH (B). IN THE PREPARATION OF SUCH REPORT, THE CHIEF ADMINISTRATOR SHALL CONSULT WITH EACH COUNTY CLERK IN WHOSE COUNTY THE PROGRAM HAS BEEN IMPLEMENTED, AFFORD HIM OR HER AN OPPORTUNITY TO

SUBMIT COMMENTS WITH RESPECT TO SUCH IMPLEMENTATION FOR INCLUSION IN THE REPORT AND CONSIDER ANY SUCH COMMENTS.

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

S 5. Section 7 of chapter 457 of the laws of 2005 amending the judiciary law and other laws relating to use of credit cards to pay fees, fines and surcharges is amended to read as follows:

S 7. This act shall take effect immediately [and shall expire and be deemed repealed 5 years after such date]; provided that section four of this act shall take effect on the first of January next succeeding the date on which it shall have become a law.

S 6. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 1, 2009, provided, however, that the amendments to paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made by sections two and three of this act shall not affect the expiration and repeal of such paragraph and shall be deemed repealed therewith.