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I N   S E N A T E

June 5, 2012

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Introduced by Sen. SALAND -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed 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 authorization of pilot programs permitting use of electronic means in certain courts; 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 development of a program relating to the use of electronic means for the commencement of certain actions; and providing for the repeal of certain provisions of chapter 367 of the laws of 1999 upon expiration thereof

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

1     Section 1. Since 1999, the state has steadily expanded its program in  
2     the use of electronic means for the commencement of actions and the  
3     exchange of legal papers and other documents between parties in  
4     proceedings in New York's civil courts. Throughout this expansion, this  
5     program has consistently demonstrated success, measured by its reliabil-  
6     ity, efficiency, convenience and savings in time and money for the liti-  
7     gating public and for the courts.  
8     Finding that use of electronic filing in judicial proceedings also is  
9     expanding rapidly across the nation, and believing that the benefits  
10    heretofore realized in New York through its use in civil proceedings can  
11    likewise be realized through its expansion into criminal and family  
12    court proceedings, the legislature enacts this measure to provide the  
13    necessary authorization.  
14    Introduction of electronic filing in the civil court proceedings was  
15    begun slowly in New York. This was to ensure that important rights would  
16    not be jeopardized as bench and bar gained experience with use of the  
17    technologies involved in such filing. The legislature now finds that  
18    proceedings in criminal and family courts can present their own unique

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

LBD15304-03-2

1 complications and that, whatever the hopes and expectations may be for a  
2 successful deployment of electronic filing in the those courts, it is in  
3 the public interest that bench and bar deliberately and carefully  
4 explore its use. Accordingly, this act limits the initial authorization  
5 for such use. This authorization, in the form of a three-year pilot  
6 program, will permit a careful examination by all affected interests to  
7 ensure that no rights are prejudiced and that the administration of  
8 justice is not in any manner compromised. Under this pilot program,  
9 electronic filing may be used in only a limited number of criminal supe-  
10 rior courts and family courts, and then only where the chief administra-  
11 tor of the courts is satisfied that the circumstances are right for such  
12 use. To further ensure that all affected interests are ready and able to  
13 participate in the pilot, this act also requires that, while the pilot  
14 operates, the principal local interests to be affected -- district  
15 attorney, criminal defense bar and county clerk is the criminal courts;  
16 authorized presentment agencies and child protective agencies in the  
17 family courts -- all acquiesce therein.

18 S 2. Chapter 367 of the laws of 1999, amending the civil practice law  
19 and rules and the judiciary law relating to authorization of pilot  
20 programs permitting use of facsimile transmission or electronic means to  
21 commence an action or special proceeding, is amended by adding two new  
22 sections 6-a and 6-b to read as follows:

23 S 6-A. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CHIEF  
24 ADMINISTRATOR OF THE COURTS, WITH THE APPROVAL OF THE ADMINISTRATIVE  
25 BOARD OF THE COURTS, MAY PROMULGATE RULES AUTHORIZING A PROGRAM IN THE  
26 USE OF ELECTRONIC MEANS IN THE SUPREME COURT AND IN THE COUNTY COURT  
27 FOR: (1) THE FILING WITH A COURT OF AN ACCUSATORY INSTRUMENT FOR THE  
28 PURPOSE OF ACQUIRING JURISDICTION IN A SUPERIOR COURT, AS PROVIDED BY  
29 ARTICLES 195 AND 200 OF THE CRIMINAL PROCEDURE LAW, AND (2) THE FILING  
30 AND SERVICE OF PAPERS IN PENDING CRIMINAL ACTIONS AND PROCEEDINGS.

31 (B)(1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, PARTICIPATION  
32 IN THIS PROGRAM SHALL BE STRICTLY VOLUNTARY AND WILL TAKE PLACE ONLY  
33 UPON CONSENT OF ALL PARTIES IN THE CRIMINAL ACTION OR PROCEEDING; EXCEPT  
34 THAT A PARTY'S FAILURE TO CONSENT TO PARTICIPATION SHALL NOT BAR ANY  
35 OTHER PARTY TO THE ACTION FROM FILING AND SERVING PAPERS BY ELECTRONIC  
36 MEANS UPON THE COURT OR ANY OTHER PARTY TO SUCH ACTION OR PROCEEDING WHO  
37 HAS CONSENTED TO PARTICIPATION. FILING AN ACCUSATORY INSTRUMENT BY ELEC-  
38 TRONIC MEANS WITH THE COURT FOR THE PURPOSE OF CONFERRING JURISDICTION  
39 OVER A CRIMINAL ACTION UPON SUCH COURT SHALL NOT REQUIRE THE CONSENT OF  
40 ANY OTHER PARTY.

41 (2) THE CHIEF ADMINISTRATOR MAY ELIMINATE THE REQUIREMENT OF CONSENT  
42 TO PARTICIPATION IN THIS PROGRAM IN SUPREME AND COUNTY COURTS OF NOT  
43 MORE THAN SIX COUNTIES PROVIDED HE OR SHE MAY NOT ELIMINATE SUCH  
44 REQUIREMENT FOR A COURT WITHOUT THE CONSENT OF THE DISTRICT ATTORNEY,  
45 THE CRIMINAL DEFENSE BAR (AS REPRESENTED BY THE HEAD OF A LEGAL AID  
46 SOCIETY, PUBLIC DEFENDER OR PRESIDENT OF A LOCAL BAR ASSOCIATION, AS  
47 APPROPRIATE) AND THE COUNTY CLERK OF THE COUNTY IN WHICH SUCH COURT  
48 PRESIDES.

49 (C) WHERE THE CHIEF ADMINISTRATOR ELIMINATES THE REQUIREMENT OF  
50 CONSENT AS PROVIDED IN PARAGRAPH (2) OF SUBDIVISION (B) OF THIS SECTION,  
51 HE OR SHE SHALL SHALL AFFORD COUNSEL THE OPPORTUNITY TO OPT OUT OF THE  
52 PROGRAM, VIA PRESENTATION OF A PRESCRIBED FORM TO BE FILED WITH THE  
53 COURT WHERE THE CRIMINAL ACTION IS PENDING. SAID FORM, WHICH SHALL NOT  
54 BE PART OF THE CASE RECORD, SHALL PERMIT AN ATTORNEY TO OPT OUT OF  
55 PARTICIPATION IN THE PROGRAM UNDER ANY OF THE FOLLOWING CIRCUMSTANCES,  
56 IN WHICH EVENT, HE OR SHE WILL NOT BE COMPELLED TO PARTICIPATE:

(1) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE COMPUTER HARDWARE AND/OR CONNECTION TO THE INTERNET AND/OR SCANNER OR OTHER DEVICE BY WHICH DOCUMENTS MAY BE CONVERTED TO AN ELECTRONIC FORMAT; OR

(2) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS THE REQUISITE KNOWLEDGE IN THE OPERATION OF SUCH COMPUTERS AND/OR SCANNERS NECESSARY TO PARTICIPATE. FOR THE PURPOSES OF THIS PARAGRAPH, THE KNOWLEDGE OF ANY EMPLOYEE OF AN ATTORNEY, OR ANY EMPLOYEE OF THE ATTORNEY'S LAW FIRM, OFFICE OR BUSINESS WHO IS SUBJECT TO SUCH ATTORNEY'S DIRECTION, SHALL BE IMPUTED TO THE ATTORNEY.

NOTWITHSTANDING THE FOREGOING: (I) WHERE A PARTY IS NOT REPRESENTED BY COUNSEL, HE OR SHE MAY NOT PARTICIPATE IN THE PROGRAM EXCEPT UPON PERMISSION OF THE COURT; AND (II) A COURT MAY EXEMPT ANY ATTORNEY FROM BEING REQUIRED TO PARTICIPATE IN THE PROGRAM UPON APPLICATION FOR SUCH EXEMPTION, SHOWING GOOD CAUSE THEREFOR.

(D) FOR PURPOSES OF THIS SECTION, "ELECTRONIC MEANS" SHALL BE AS DEFINED IN SUBDIVISION (F) OF RULE 2103 OF THE CIVIL PRACTICE LAW AND RULES.

(E)(1) NOTHING IN THIS SECTION SHALL AFFECT OR CHANGE ANY EXISTING LAWS GOVERNING THE SEALING AND CONFIDENTIALITY OF COURT RECORDS IN CRIMINAL PROCEEDINGS, NOR SHALL THIS SECTION BE CONSTRUED TO COMPEL A PARTY TO FILE A SEALED DOCUMENT BY ELECTRONIC MEANS.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO PAPER OR DOCUMENT THAT IS FILED BY ELECTRONIC MEANS IN A CRIMINAL PROCEEDING IN SUPREME COURT OR COUNTY COURT SHALL BE AVAILABLE FOR PUBLIC INSPECTION ON-LINE; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT PROHIBIT THE CHIEF ADMINISTRATOR, IN THE EXERCISE OF HIS OR HER DISCRETION, FROM POSTING PAPERS OR DOCUMENTS THAT HAVE NOT BEEN SEALED PURSUANT TO LAW ON A PUBLIC WEBSITE MAINTAINED BY THE UNIFIED COURT SYSTEM WHERE: (I) THE WEBSITE IS NOT THE WEBSITE ESTABLISHED BY THE RULES PROMULGATED PURSUANT TO SUBDIVISION (A) OF THIS SECTION, AND (II) TO DO SO WOULD BE IN THE PUBLIC INTEREST.

S 6-B. (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 ELECTRONIC MEANS IN THE FAMILY COURT FOR: (1) THE ORIGINATION OF PROCEEDINGS IN SUCH COURT, AND (2) THE FILING AND SERVICE OF PAPERS IN PENDING PROCEEDINGS.

(B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, PARTICIPATION IN THIS PROGRAM SHALL BE STRICTLY VOLUNTARY AND WILL TAKE PLACE ONLY UPON CONSENT OF ALL PARTIES IN THE PROCEEDING; EXCEPT THAT A PARTY'S FAILURE TO CONSENT TO PARTICIPATION SHALL NOT BAR ANY OTHER PARTY FROM FILING AND SERVING PAPERS BY ELECTRONIC MEANS UPON THE COURT OR ANY OTHER PARTY TO SUCH PROCEEDING WHO HAS CONSENTED TO PARTICIPATION. FILING A PETITION WITH THE COURT BY ELECTRONIC MEANS FOR THE PURPOSE OF ORIGINATING A PROCEEDING SHALL NOT REQUIRE THE CONSENT OF ANY OTHER PARTY.

(2) IN THE RULES PROMULGATED PURSUANT TO SUBDIVISION (A) OF THIS SECTION, THE CHIEF ADMINISTRATOR MAY ELIMINATE THE REQUIREMENT OF CONSENT TO PARTICIPATION IN THIS PROGRAM IN FAMILY COURTS OF NOT MORE THAN SIX COUNTIES FOR:

(I) THE FILING WITH THE COURT OF A PETITION ORIGINATING A JUVENILE DELINQUENCY PROCEEDING UNDER ARTICLE 3 OF THE FAMILY COURT ACT BY A PRESENTMENT AGENCY AS DEFINED IN SECTION 301.2 OF SUCH ACT;

(II) THE FILING WITH THE COURT OF A PETITION ORIGINATING A PROCEEDING TO DETERMINE ABUSE OR NEGLECT PURSUANT TO ARTICLE 10 OF THE FAMILY COURT

1 ACT BY A CHILD PROTECTIVE AGENCY, AS DEFINED IN SECTION 1012 OF SUCH  
2 ACT; AND

3 (III) THE FILING AND SERVICE OF PAPERS IN PROCEEDINGS SPECIFIED IN  
4 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH WHERE, PURSUANT TO SUCH  
5 SUBPARAGRAPHS, SUCH PROCEEDINGS WERE ORIGINATED IN THE COURT BY ELEC-  
6 TRONIC FILING.

7 NOTWITHSTANDING THE FOREGOING, THE CHIEF ADMINISTRATOR MAY NOT ELIMI-  
8 NATE THE REQUIREMENT OF CONSENT TO PARTICIPATION WITHOUT THE CONSENT OF  
9 EACH AUTHORIZED PRESENTMENT AGENCY AND CHILD PROTECTIVE AGENCY OF AN  
10 AFFECTED COUNTY.

11 (C) WHERE THE CHIEF ADMINISTRATOR ELIMINATES THE REQUIREMENT OF  
12 CONSENT AS PROVIDED IN PARAGRAPH 2 OF SUBDIVISION (B) OF THIS SECTION,  
13 HE OR SHE SHALL AFFORD COUNSEL THE OPPORTUNITY TO OPT OUT OF THE  
14 PROGRAM, VIA PRESENTATION OF A PRESCRIBED FORM TO BE FILED WITH THE  
15 CLERK OF THE COURT WHERE THE PROCEEDING IS PENDING. SAID FORM, WHICH  
16 SHALL NOT BE PART OF THE CASE RECORD, SHALL PERMIT AN ATTORNEY TO OPT  
17 OUT OF PARTICIPATION IN THE PROGRAM UNDER ANY OF THE FOLLOWING CIRCUM-  
18 STANCES, IN WHICH EVENT, HE OR SHE WILL NOT BE COMPELLED TO PARTICIPATE:

19 (1) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS  
20 THE COMPUTER HARDWARE AND/OR CONNECTION TO THE INTERNET AND/OR SCANNER  
21 OR OTHER DEVICE BY WHICH DOCUMENTS MAY BE CONVERTED TO AN ELECTRONIC  
22 FORMAT; OR

23 (2) WHERE THE ATTORNEY CERTIFIES IN GOOD FAITH THAT HE OR SHE LACKS  
24 THE REQUISITE KNOWLEDGE IN THE OPERATION OF SUCH COMPUTERS AND/OR SCAN-  
25 NERS NECESSARY TO PARTICIPATE. FOR THE PURPOSES OF THIS PARAGRAPH, THE  
26 KNOWLEDGE OF ANY EMPLOYEE OF AN ATTORNEY, OR ANY EMPLOYEE OF THE ATTOR-  
27 NEY'S LAW FIRM, OFFICE OR BUSINESS WHO IS SUBJECT TO SUCH ATTORNEY'S  
28 DIRECTION, SHALL BE IMPUTED TO THE ATTORNEY.

29 NOTWITHSTANDING THE FOREGOING: (I) WHERE A PARTY IS NOT REPRESENTED BY  
30 COUNSEL, HE OR SHE MAY NOT PARTICIPATE IN THE PROGRAM EXCEPT UPON  
31 PERMISSION OF THE COURT; AND (II) A COURT MAY EXEMPT ANY ATTORNEY FROM  
32 BEING REQUIRED TO PARTICIPATE IN THE PROGRAM UPON APPLICATION FOR SUCH  
33 EXEMPTION, SHOWING GOOD CAUSE THEREFOR.

34 (D) FOR PURPOSES OF THIS SECTION, "ELECTRONIC MEANS" SHALL BE AS  
35 DEFINED IN SUBDIVISION (F) OF RULE 2103 OF THE CIVIL PRACTICE LAW AND  
36 RULES.

37 (E) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, NO PAPER OR DOCU-  
38 MENT THAT IS FILED BY ELECTRONIC MEANS IN A PROCEEDING IN FAMILY COURT  
39 SHALL BE AVAILABLE FOR PUBLIC INSPECTION ON-LINE.

40 S 3. Subparagraphs 1 and 2 of paragraph (B) of subdivision (b) of  
41 section 6 of chapter 367 of the laws of 1999, amending the civil prac-  
42 tice law and rules and the judiciary law relating to authorization of  
43 pilot programs permitting use of facsimile transmission or electronic  
44 means to commence an action or special proceeding, are REPEALED, subpar-  
45 agraphs 3, 4 and 5 of such paragraph (B) are renumbered to be subpara-  
46 graphs 1, 2 and 3 and subparagraph 1, as amended by chapter 543 of the  
47 laws of 2011 and as renumbered by this section, is amended to read as  
48 follows:

49 1. One or more classes of cases (excluding matrimonial actions as  
50 defined by the civil practice law and rules, election law proceedings,  
51 proceedings brought pursuant to article 78 of the civil practice law and  
52 rules, and proceedings brought pursuant to the mental hygiene law) in  
53 supreme court in ERIE, Livingston, Monroe, Rockland, Tompkins, Allegany,  
54 Essex, Onondaga, SUFFOLK and Westchester counties AND IN THE COUNTIES  
55 WITHIN THE CITY OF NEW YORK, and

1 S 4. Subdivisions (c) and (d) of section 6 of chapter 416 of the laws  
2 of 2009, amending the civil practice law and rules relating to service  
3 of papers by electronic means, as added by chapter 543 of the laws of  
4 2011, are amended to read as follows:

5 (c)(1) The [chief administrator shall create an] advisory committee to  
6 consult with [him or her] THE CHIEF ADMINISTRATOR regarding the develop-  
7 ment of a program relating to the use of electronic means for the  
8 commencement of criminal actions and the filing and service of papers in  
9 pending criminal actions and proceedings IS CONTINUED. The committee  
10 shall consist of such number of members as will enable the chief admin-  
11 istrator to obtain input from those who ARE OR would be affected by such  
12 electronic filing program, and such members shall include county clerks;  
13 chief clerks of supreme, county and other courts; district attorneys;  
14 not-for-profit legal service providers; public defenders; statewide and  
15 local specialty bar associations whose membership devotes a significant  
16 portion of their practice to assigned criminal cases pursuant to subpar-  
17 agraph (i) of paragraph (a) of subdivision 3 of section 722 of the coun-  
18 ty law; institutional providers of criminal defense services and other  
19 members of the criminal defense bar; representatives of victims' rights  
20 organizations; unaffiliated attorneys who regularly appear in  
21 proceedings that ARE OR would be affected by such electronic filing  
22 program and other interested members of the criminal justice community.  
23 Such committee shall help the chief administrator to evaluate the impact  
24 of such electronic filing program on litigants including unrepresented  
25 parties, practitioners and the courts and to obtain input from those who  
26 ARE OR would be affected by such electronic filing program, including  
27 district attorneys, not-for-profit legal service providers, public  
28 defenders, statewide and local specialty bar associations whose member-  
29 ship devotes a significant portion of their practice to assigned crimi-  
30 nal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3  
31 of section 722 of the county law, institutional providers of criminal  
32 defense services and other members of the criminal defense bar, repre-  
33 sentatives of victims' rights organizations, unaffiliated attorneys who  
34 regularly appear in proceedings that ARE OR would be affected by such  
35 electronic filing program and other interested members of the criminal  
36 justice community.

37 (2) No later than January 1, [2012] 2015, the chief administrator of  
38 the courts shall submit to the legislature, the governor and the chief  
39 judge of the state a report of the evaluation including the entities or  
40 individuals consulted, the input received, any recommendations of the  
41 advisory committee to the chief administrator, along with recommenda-  
42 tions for legislation [authorizing the development of a program relat-  
43 ing] IN RELATION to the use of electronic means for the commencement of  
44 criminal actions and the filing and service of papers in pending crimi-  
45 nal actions and proceedings. THIS REPORT SHALL DEVOTE SPECIAL ATTENTION  
46 TO THE QUESTION WHETHER SUCH USE OF ELECTRONIC MEANS SHALL BE AUTHORIZED  
47 IN THE LOCAL CRIMINAL COURTS OF THE STATE. IN THE REPORT, THE CHIEF  
48 ADMINISTRATOR ALSO SHALL ADDRESS ISSUES THAT BEAR UPON THE NEED FOR THE  
49 COURTS, DISTRICT ATTORNEYS AND OTHERS TO RETAIN PAPERS FILED WITH COURTS  
50 OR SERVED UPON PARTIES IN CRIMINAL PROCEEDINGS WHERE ELECTRONIC MEANS  
51 CAN OR HAVE BEEN USED AND MAKE RECOMMENDATIONS FOR SUCH CHANGES IN LAWS  
52 REQUIRING RETENTION OF SUCH PAPERS AS TO THE CHIEF ADMINISTRATOR MAY  
53 SEEM APPROPRIATE.

54 (d) (1) The [chief administrator shall create an] advisory committee  
55 to consult with [him or her] THE CHIEF ADMINISTRATOR regarding the  
56 development of a program relating to the use of electronic means for the

1 origination of juvenile delinquency proceedings under article 3 of the  
2 family court act and abuse or neglect proceedings pursuant to article 10  
3 of the family court act in family court and the filing and service of  
4 papers in such pending proceedings IS CONTINUED. The committee shall  
5 consist of such number of members as will enable the chief administrator  
6 to obtain input from those who ARE OR would be affected by such elec-  
7 tronic filing [programs] PROGRAM, and such members shall include chief  
8 clerks of family courts; representatives of authorized presentment and  
9 child protective agencies; other appropriate county and city government  
10 officials; institutional providers of legal services for children and/or  
11 parents; not-for-profit legal service providers; public defenders;  
12 attorneys assigned pursuant to article 18-B of the county law; and other  
13 members of the family court bar; representatives of victims' rights  
14 organizations; unaffiliated attorneys who regularly appear in  
15 proceedings that ARE OR would be affected by such electronic filing  
16 program; and other interested members of the family practice community.  
17 Such committee shall help the chief administrator to evaluate the impact  
18 of such electronic filing program on litigants including unrepresented  
19 parties, practitioners and the courts and to obtain input from those who  
20 ARE OR would be affected by such electronic filing program, including  
21 representatives of authorized presentment and child protective agencies,  
22 other appropriate county and city government officials, institutional  
23 providers of legal services for children and/or parents, not-for-profit  
24 legal service providers, public defenders, attorneys assigned pursuant  
25 to article 18-B of the county law and other members of the family court  
26 bar, representatives of victims' rights organizations, unaffiliated  
27 attorneys who regularly appear in proceedings that ARE OR would be  
28 affected by such electronic filing program, and other interested members  
29 of the criminal justice community.

30 (2) No later than January 1, [2012] 2015, the chief administrator of  
31 the courts shall submit to the legislature, the governor and the chief  
32 judge of the state a report of the evaluation including the entities or  
33 individuals consulted, input received, any recommendations of the advi-  
34 sory committee to the chief administrator, along with recommendations  
35 for legislation [authorizing the development of a program relating] IN  
36 RELATION to the use of electronic means for the origination of juvenile  
37 delinquency proceedings under article 3 of the family court act and  
38 abuse or neglect proceedings pursuant to article 10 of the family court  
39 act in family court and the filing and service of papers in such pending  
40 proceedings.

41 S 5. This act shall take effect immediately; provided, however, that  
42 sections 6-a and 6-b of chapter 367 of the laws of 1999, as added by  
43 section two of this act, shall expire and be deemed repealed September  
44 1, 2015; and provided further that the amendments made to paragraph (B)  
45 of subdivision (b) of section 6 of chapter 367 of the laws of 1999 made  
46 by section three of this act shall not affect the expiration and repeal  
47 of such provisions and shall be deemed to be repealed therewith.