

CHAPTER TEXT:

LAWS OF NEW YORK, 2011

CHAPTER 543

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 specifying courts and actions in which pilot programs will be authorized to permit 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 the establishment of advisory committees to implement laws to effect service of papers by electronic means

Became a law September 23, 2011, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

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

Section 1. The legislature finds and declares that use of electronic means to commence judicial proceedings and to file and serve papers in pending proceedings ("e-filing") can be highly beneficial to the state, local governments and the public. Accordingly, it is the purpose of this measure to enable a further controlled expansion of e-filing in the civil courts of the state; and to lay the groundwork for an anticipated future introduction of e-filing in criminal and family courts.

§ 2. The first unnumbered paragraph and clauses (i), (iv), (v), (xi) and (xii) of subparagraph 1, and subparagraphs 2 and 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, the first unnumbered paragraph of subparagraph 1, subparagraph 3 as amended by chapter 528 of the laws of 2010 and clauses (i), (iv), (v), (xi) and (xii) of subparagraph 1 and subparagraph 2 as amended by chapter 416 of the laws of 2009, are amended and a new clause (xiii) is added to subparagraph 1 to read as follows:

The supreme court ~~[of]~~ in counties within the city of New York ~~[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]:~~

(i) Breach of contract ~~[(regardless of amount in controversy)]~~ or fiduciary duty, fraud, misrepresentation, business tort (including but not limited to actions involving claims of unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (including but not limited to sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

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

CHAP. 543

2

(iv) Shareholder derivative actions [~~without consideration of the monetary threshold~~];

(v) Commercial class actions [~~without consideration of the monetary threshold~~];

(xi) Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures [~~without consideration of the monetary threshold~~]; [and]

(xii) Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to article 75 of the civil practice law and rules involving any of the foregoing enumerated commercial issues [~~without consideration of the monetary threshold~~]; and

(xiii) Breach of contract cases other than those specified in clause (i) of this subparagraph.

2. Tort cases in supreme court in [~~Westchester county~~] counties within the city of New York, and

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 supreme court in Livingston, Monroe, Rockland [and], Tompkins, Allegany, Essex, Onondaga and Westchester counties [~~-~~], and

§ 3. 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, is amended by adding two new subparagraphs 4 and 5 to read as follows:

4. One or more classes of cases in surrogate's court in such counties as the chief administrator shall specify, and

5. Actions in the civil court of the city of New York brought by a provider of health care services specified in paragraph (1) of subsection (a) of section 5102 of the insurance law against an insurer for failure to comply with rules and regulations promulgated by the superintendent of insurance pursuant to subsection (b) of section 5108 of such law.

§ 4. 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 528 of the laws of 2010, 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 (where the affected court is the supreme court of a county outside the city of New York), have afforded them the opportunity to submit comments with respect thereto, 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.

§ 5. 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, as amended by chapter 528 of the laws of 2010, is amended to read as follows:

§ 6. (a) Not later than April 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~~ programs 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~~ law 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~~ such programs 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~~ a program has been implemented in civil cases in the supreme court, the advisory committees established pursuant to subdivisions (b), (c) and (d) of this section, the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article 18-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and afford ~~him or her~~ them an opportunity to submit comments with respect to such implementation for inclusion in the report and ~~consider~~ address any such comments.

(b) (1) The chief administrator of the courts shall create an advisory committee to consult with him or her in the implementation of ~~this act~~ laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein in the supreme court. This committee shall consist of such number of members as the chief administrator shall designate, ~~no~~ among which there shall be representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the supreme court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator. No fewer than half ~~to~~ of the members of this advisory committee shall be upon the recommendation of the New York State Association of County Clerks.

(2) The chief administrator shall create an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court. This committee shall consist of such number of

members as the chief administrator shall designate, among which there shall be chief clerks of surrogate's courts; representatives of the organized bar including but not limited to city, state, county and women's bar associations; institutional providers of legal services; not-for-profit legal service providers; attorneys assigned pursuant to article 18-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the surrogate's court; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(3) The chief administrator shall create an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; representatives of the organized bar including but not limited to city, state, county and women's bar associations; attorneys who regularly appear in actions specified in subparagraph 5 of paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999; and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service and filing of papers therein in the civil court of the city of New York; and any other persons as deemed appropriate by the chief administrator.

(c)(1) The chief administrator shall create an advisory committee to consult with him or her regarding the development of a program relating to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; not-for-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision 3 of section 722 of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who would be affected by such electronic filing program, including district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivi-

sion 3 of section 722 of the county law, institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program and other interested members of the criminal justice community.

(2) No later than January 1, 2012, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report of the evaluation including the entities or individuals consulted, the input received, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation authorizing the development of a program relating to the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings.

(d) (1) The chief administrator shall create an advisory committee to consult with him or her regarding the development of a program relating to the use of electronic means for the origination of juvenile delinquency proceedings under article 3 of the family court act and abuse or neglect proceedings pursuant to article 10 of the family court act in family court and the filing and service of papers in such pending proceedings. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who would be affected by such electronic filing programs, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article 18-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who would be affected by such electronic filing program, including representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal service providers, public defenders, attorneys assigned pursuant to article 18-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that would be affected by such electronic filing program, and other interested members of the criminal justice community.

(2) No later than January 1, 2012, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report of the evaluation including the entities or individuals consulted, input received, any recommendations of the advisory committee to the chief administrator, along with recommendations for legislation authorizing the development of a program relating to the use of electronic means for the origination of juvenile delinquency proceedings under article 3 of the family court act and abuse or neglect proceedings pursuant to article 10 of the family court act in family court and the filing and service of papers in such pending proceedings.

CHAP. 543

6

§ 6. Section 7 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:

§ 7. This act shall take effect on September 1, 2009; provided, however, that no rule adopted pursuant to paragraph (B) of subdivision (b) of section 6 of chapter 367 of the laws of 1999, as added by section two of this act, shall take effect until at least one hundred eighty days have elapsed after such effective date, and provided that such paragraph (B) shall expire and be deemed repealed September 1, ~~2012~~ 2015.

§ 7. This act shall take effect immediately; 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, three and four of this act shall not affect the repeal of such provisions and shall expire and be deemed repealed therewith.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly
