

## CHAPTER TEXT:

## LAWS OF NEW YORK, 1999

## CHAPTER 367

AN ACT to amend the civil practice law and rules and the judiciary law, in relation to authorization of pilot programs permitting use of facsimile transmission or electronic means to commence an action or special proceeding and providing for the repeal of certain provisions upon expiration thereof

Became a law July 27, 1999, 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. Section 304 of the civil practice law and rules, as amended by chapter 606 of the laws of 1996, is amended to read as follows:

§ 304. Method of commencing action or special proceeding. An action is commenced by filing a summons and complaint or summons with notice. A special proceeding is commenced by filing a notice of petition or order to show cause and a petition. Where a court finds that circumstances prevent immediate filing, the signing of an order requiring the subsequent filing at a specific time and date not later than five days thereafter shall commence the action. For purposes of this section, and for purposes of ~~[sections]~~ section two hundred three of this chapter and section three hundred six-a of this ~~[chapter]~~ article, filing shall mean the delivery of the summons with notice, summons and complaint, notice of petition or order to show cause to the clerk of the court in the county in which the action or special proceeding is brought or any other person designated by the clerk of the court for that purpose together with any fee required as specified in rule twenty-one hundred two of this chapter for filing. Notwithstanding any other provision of law, such delivery may be accomplished by facsimile transmission or electronic means, as defined in subdivision (f) of rule twenty-one hundred three of this chapter, where and in the manner authorized by the chief administrator of the courts by rule. At ~~[such]~~ the time of filing, the ~~[original and a copy of such]~~ filed papers shall be date stamped by ~~[a]~~ the clerk of the court ~~[clerk]~~ who shall file ~~[the original]~~ them and maintain a record of the date of the filing and who shall ~~[immediately]~~ return ~~[the]~~ forthwith a date stamped copy, together with an index number, to the filing party ~~[who brought the filing]~~. Where filing is by facsimile transmission, the clerk of the court need only return dated stamped copy of the first page of the papers initiating the lawsuit, together with the index number. Where filing is by electronic means, the clerk shall, in accordance with rules promulgated by the chief administrator, forthwith notify the filing party of the index number and the date and time of filing. A confirmation record produced by the filing party's facsimile machine or computer and an affidavit of filing by the filing party, shall be prima facie evidence that the filing party transmitted documents consistent with the date, time and place appearing on the confirmation record.

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

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§ 2. Rule 2101 of the civil practice law and rules is amended by adding a new subdivision (g) to read as follows:

(g) Service by electronic means. Each paper served or filed by electronic means, as defined in subdivision (f) of rule twenty-one hundred three, shall be capable of being reproduced by the receiver so as to comply with the provisions of subdivisions (a) through (d) of this rule.

§ 3. Paragraphs 5 and 6 of subdivision (b) of rule 2103 of the civil practice law and rules, paragraph 5 as amended by chapter 244 of the laws of 1990 and paragraph 6 as added by chapter 478 of the laws of 1989 and as renumbered by chapter 244 of the laws of 1990, are amended to read as follows:

5. by transmitting the paper to the attorney by ~~[electronic means]~~ facsimile transmission, provided that a facsimile telephone number ~~[or other station or other limitation, if any,]~~ is designated by the attorney for that purpose. Service by ~~[electronic means]~~ facsimile transmission shall be complete upon the receipt by the sender of a signal from the equipment of the attorney served indicating that the transmission was received, and the mailing of a copy of the paper to that attorney. The designation of a facsimile telephone number ~~[or other station for service by electronic means]~~ in the address block subscribed on a paper served or filed in the course of an action or proceeding shall constitute consent to service by ~~[electronic means]~~ facsimile transmission in accordance with this subdivision. An attorney may change or rescind a facsimile telephone number ~~[or address designated for service of documents]~~ by serving a notice on the other parties; or

6. by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose or, if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by law is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address in the state~~[-];~~ or

§ 4. Subdivision (b) of rule 2103 of the civil practice law and rules is amended by adding a new paragraph 7 to read as follows:

7. by transmitting the paper to the attorney by electronic means where and in the manner authorized by the chief administrator of the courts by rule upon the party's written consent. The subject matter heading for each paper sent by electronic means must indicate that the matter being transmitted electronically is related to a court proceeding.

§ 5. Subdivision (f) of rule 2103 of the civil practice law and rules, as added by chapter 461 of the laws of 1989, is amended to read as follows:

(f) Definitions. For the purposes of this rule:

1. "Mailing" means the deposit of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at that person's last known address, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state;

2. "Electronic means" means any method of transmission of information between ~~[two]~~ computers or other machines designed for the purpose of sending and receiving such transmissions, and which ~~[results in the~~

~~fixation of]~~ allows the recipient to reproduce the information transmitted in a tangible medium of expression[-];

3. "Facsimile transmission" means any method of transmission of documents to a facsimile machine at a remote location which can automatically produce a tangible copy of such documents.

§ 6. 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 an experimental program in which actions and special proceedings in supreme court may be commenced in the supreme court of Monroe, Westchester, New York, and Suffolk counties and the New York court of claims. Participation in this program shall be strictly voluntary, and will take place only upon consent. For purposes of this section, "facsimile transmission" and "electronic means" shall be as defined in subdivision (f) of rule 2103 of the civil practice law and rules. The cases subject to filing by facsimile shall be limited to commercial claims, mental hygiene and conservatorship proceedings, tax certiorari claims, and claims against the state of New York. The cases subject to filing by electronic means shall be limited to those involving commercial and tax certiorari claims.

§ 7. The civil practice law and rules is amended by adding a new section 8023 to read as follows:

§ 8023. Payment of fee by credit card. Notwithstanding any provision of law to the contrary, a party may pay any of the fees specified in subdivision (a) of section 8018, subdivisions (a) and (c) of section 8020 and section 8022 of this article by means of a credit card or similar device; provided, however, notwithstanding any other provision of law, any party paying a fee hereunder in such manner also may be required to pay a reasonable administrative fee. The amount of such fee and the time and manner of its payment shall be in accordance with the system established pursuant to paragraph (j) of subdivision two of section two hundred twelve of the judiciary law.

§ 8. Paragraph (j) of subdivision 2 of section 212 of the judiciary law, as amended by chapter 805 of the laws of 1987 and relettered by chapter 316 of the laws of 1988, is amended to read as follows:

(j) Notwithstanding any provision of law, rule or regulation to the contrary, establish a system for the posting of bail in court and the payment of fines and court fees by credit card or similar device. In establishing such system, the chief administrator shall seek the assistance of the state comptroller who shall assist in developing such system so as to ensure that such funds shall be returned to ~~the~~ any jurisdiction which, by law, ~~is~~ may be entitled to them. The chief administrator shall periodically accord the head of each police department or police force and of any state department, agency, board, commission or public authority having police officers who fix pre-arraignment bail pursuant to section 150.30 of the criminal procedure law an opportunity to have the system established pursuant to this paragraph apply to the posting of pre-arraignment bail with police officers under his or her jurisdiction.

§ 9. Not later than April 1, 2002, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the experiment authorized by this act and containing recommendations for further legislation.

§ 10. This act shall take effect immediately; provided, however, that section 8023 of the civil practice law and rules, as added by section seven of this act and the amendment to paragraph (j) of subdivision 2 of section 212 of the judiciary law made by section eight of this act, and

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the authority of the chief administrator of the courts to promulgate the rules authorized by section 304 and paragraph 7 of subdivision (b) of rule 2103 of the civil practice law and rules, as amended by section one of this act and as added by section four of this act, respectively, shall expire July 1, 2002 when upon such date the amendments made by such sections of this act shall be deemed repealed and provided further, however, that section six of this act shall expire and be deemed repealed July 1, 2002.

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.

JOSEPH L. BRUNO  
Temporary President of the Senate

SHELDON SILVER  
Speaker of the Assembly

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