



Memorandum in Support

April 15, 2025

A.7683

S. 6910

By: M. of A. Lavine

By: Senator Hoylman-Sigal

Assembly Committee: Reported out
of Judiciary

Senate Committee: Finance

Effective Date: Immediately

AN ACT to amend the executive law, in relation to limiting recordkeeping and reporting duties of public notaries.

LAW AND SECTIONS REFERRED TO: Adds a new Section 135-D of the Executive Law

THE NEW YORK STATE BAR ASSOCIATION SUPPORTS A.7683/S.6910

Executive Law §135-c was enacted to establish requirements and procedures to be followed for electronic notarization. The statute delineates conditions that must be met to engage in electronic notarization including additional record keeping requirements, but significantly did not modify existing requirements for in person notarizations. In fact, the section is titled “Electronic Notarization.” Nearly seven months after the requirements became law, the New York Department of State promulgated regulations purporting to implement the new statute. However, the 2023 regulations contained new record keeping requirements applicable to *all notary acts*. that the changes to practices for in-person notarization: (1) have no basis in the enabling legislation, (2) are not tailored to meet the goal of combatting fraud, (3) create significant challenges for attorneys practicing in New York, and (4) encroaches into attorney-client privilege. A.7683 (Lavine)/S.6910 (Hoylman-Sigal) would resolve all these infirmities by making it clear that the regulatory record keeping obligations imposed by the Department of State only apply to electronic notarization.

The Department of State overreached in its implementation of Executive Law §135-c regarding electronic notarizations by imposing the electronic notarization statute’s record keeping and retention requirements on all notarial acts. Pursuant to longstanding principles of statutory construction, when one or more things of a class are expressly mentioned, others of the same class are excluded. Since the notary statute expressly provides for record keeping and retention for electronic notarization, it excludes the same for in person notarization.

In 2022, the Legislature could have, but did not, provide for the promulgation of new regulations dealing with notarization other than electronic notarization, yet the Department of State stepped in prematurely, without the authorization of the Legislature.

The Department of State regulation which requires keeping a log noting dates, times, locations, documents, and identification for a decade, while burdensome, is not an obstacle for those using false identification or those who are simply bad actors. The Department of State regulations apply far more broadly than necessary and are not actually tailored to achieve deed fraud reduction. Those using false identification or those who are simply bad actors will not be deterred by bureaucratic minutia.

Imposing these regulations on attorneys and their employees engaged in in-person notarization is superfluous, encroaches on attorney client privilege, and imposes unduly burdensome record retention requirements. As detailed in NYSBA's [*Task Force on Notarization report*](#), attorneys in New York are subject to a framework of extensive fiduciary and ethical obligations to their clients, with disciplinary proceedings and oversight already built in. These obligations continue for the lawyer, even when acting in the role of notary. Adding notary record keeping and retention requirements is unnecessary and poses an additional administrative burden for all attorneys. Rural attorneys, already struggling to meet the needs of their clients with limited support staff will find it extremely difficult and costly to adhere to these new regulations. Even more concerning is the impact these record and retention rules will have on the already limited budgets of Legal Services programs who are often required to notarize documents for their clients. Attorneys and members of their staff will often notarize statements by clients which are privileged or contain privileged information. The requirement that the notary log be capable of being produced to the secretary of state and others as necessary in relation to the performance of the notary public's obligations presents serious issues in this respect.¹

For these reasons, the New York State Bar Association **SUPPORTS** this legislation.

¹ Resolution and reports of the New York State Bar Association Task Force on Notarization April 2023 Approved by the New York State Bar Association House of Delegates on April 1, 2023, (<https://nysba.org/wp-content/uploads/2022/03/final-no-changes-Task-Force-on-Notarization-April-2023-1.pdf>), pg. 3