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HR-103 (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

HOUSE RESOLUTION

NO. 103

Introduced by Assembly Member Mark Stone
(Coauthors: Assembly Members Chiu, Cristina Garcia, and Kalra)

August 18, 2020

Relative to the California Bar Examination.

LEGISLATIVE COUNSEL'S DIGEST

HR 103, as introduced, Mark Stone.

WHEREAS, The California Bar Examination has had the highest passing score of any state in the nation, except Delaware, at 1440, and the lowest passing rate; and

WHEREAS, The California Bar Examination has historically had a racially discriminatory impact on people of color and, therefore, on the legal profession as a whole. The State Bar of California reviewed bar passage rates for the past decade and determined that, for all bar exams administered from February 2009 to February 2019, the overall passage rate for White applicants was 52 percent, but only 36 percent for Latino applicants, 40 percent for Asian applicants, and 24 percent for Black applicants. If the passing score on the bar exam had been reduced to 1390, five percent more White test takers would have passed the exam, but 8 percent more Latinos, 7 percent more Asians, and 13 percent more Blacks would have also passed; and

WHEREAS, The Committee of Bar Examiners of the State Bar of California acknowledged in 2017 that “[t]here is no empirical evidence available that would support a statement that as a result of its high pass line California lawyers are more competent than those in other states, nor is there any data that suggests that there are fewer attorney discipline cases per attorney capita in this state.” That same year, the State Bar of California stated that “the relationship between discipline rates and minimum competence . . . is unclear at best” and as a result, there are doubts that “changing the cut score would have any impact on the incidence of attorney misconduct”; and

WHEREAS, Maintaining an unduly high cut score has had serious, negative consequences for California, including limiting the diversity of attorneys in the state and exacerbating the lack of access to legal representation for many Californians. Far too often, low- and middle-income Californians with critical legal representation needs, including in divorce, child custody, unlawful detainer,

foreclosure, probate, and other civil matters, have been unable to find and afford legal counsel to protect their critical legal rights and interests; and

WHEREAS, Increasing the number of competent attorneys who are available to represent low- and middle-income clients in California will provide greater opportunity for justice for critically underserved state residents; and

WHEREAS, California's historically high passing score has created an artificial barrier to entry into the legal profession that has disproportionately harmed law school graduates of color and harmed low- and middle-income Californians seeking access to justice; and

WHEREAS, As the result of the COVID-19 global pandemic, the California in-person July 2020 bar exam was cancelled, thus protecting the health of 2020 law school graduates and other test takers, but preventing them from starting their legal careers, and placing their professional lives on hold, while leaving them with families to support and thousands of dollars of school loans to repay in the midst of an economic collapse; and

WHEREAS, The cost of delayed entry into the legal profession can have profoundly negative impacts on the lives of law school graduates since they may lose jobs they already have or not get jobs that they were promised, but are still obligated to pay student loans that average well over \$100,000; and

WHEREAS, On July 16, 2020, the California Supreme Court unanimously took bold action to help the 2020 law school graduates by (1) providing an online remote bar exam in October; (2) offering them a temporary provisional license to practice law temporarily; and (3) most importantly in the long run, permanently lowering the passing score of the bar exam to 1390. With the passing score of 1390, California will still have a passing score that is higher than almost every other state in the nation; and

WHEREAS, On August 10, 2020, the California Supreme Court chose not to lower the passing score retroactively and the reduced score only applies prospectively. This decision particularly impacts law school graduates who graduated in the past few years, scored 1390 or above, but under 1440, and whose plans to take the July 2020 bar exam were impacted by the COVID-19 global pandemic. Such prior bar exam takers reasonably feel that they have been unfairly disadvantaged by the California Supreme Court's decision, given that they meet California's new standard for minimum competency and exceed that standard for most states in the nation; and

WHEREAS, If a 1390 passing score represents minimal competency to practice law today, it certainly did so a few years ago, as well. Moreover, a recent score at 1390 or above ensures that applicants to practice law still retain the proficiency they demonstrated on the exam; and

WHEREAS, The State Bar of California and the California Supreme Court recognize that recent bar exam scores – those within the last 5 years – are still valid for admission to the practice of law by allowing those seeking admission to the practice of law to base admission on a bar exam taken within the last five years. (Rules of the State Bar of California, Rule 4.17(A)). In fact, the Rules of the State Bar allow the five-year period to be extended if there is good cause shown, so the California Supreme Court should also reasonably allow for the recognition of older bar exam scores, provided the applicant can show that they have stayed current in their legal knowledge. (Rules of the State Bar of California, Rule 4.17(B)); and

WHEREAS, According to an analysis performed by the State Bar of California, if the passing score had been lowered to 1390, an additional 3,741 individuals would have passed the bar exam from February 2009 to February 2019; and

WHEREAS, The retroactive recognition of older bar exam scores benefits both law school graduates and the state as a whole. It will provide more fair and humane treatment of the law school graduates who have demonstrated sufficient proficiency to practice law by reducing artificial barriers to entry that have disproportionately harmed law school graduates of color. Additionally, since the COVID-19 global pandemic has only increased the legal needs of Californians, providing more competent and diverse attorneys to represent them should help increase their access to justice; and

WHEREAS, While the California Constitution gives the California Supreme Court the ability to determine who can practice law in this state, such power must be used responsibly to ensure not only the competency of the state's attorneys, but also to ensure that there are sufficient component attorneys in the state to provide access to justice for all Californians and to reduce racial discrimination and inherent bias in the legal profession; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly strongly encourages the California Supreme Court, in order to help make California attorneys more representative of the state, better support recent law school graduates, and provide greater access to justice for low- and middle-income Californians, to make the reduction in the passing score of the California Bar Examination retroactive to July 2015; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the California Supreme Court and the State Bar of California.