

House Resolution

No. 103

**Introduced by Assembly Member Mark Stone
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August 18, 2020

House Resolution No. 103—Relative to the California Bar Examination.

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

4 WHEREAS, The California Bar Examination has historically
5 had a racially discriminatory impact on people of color and,
6 therefore, on the legal profession as a whole. The State Bar of
7 California reviewed bar passage rates for the past decade and
8 determined that, for all bar exams administered from February
9 2009 to February 2019, the overall passage rate for White
10 applicants was 52 percent, but only 36 percent for Latino
11 applicants, 40 percent for Asian applicants, and 24 percent for
12 Black applicants. If the passing score on the bar exam had been
13 reduced to 1390, five percent more White test takers would have
14 passed the exam, but 8 percent more Latinos, 7 percent more
15 Asians, and 13 percent more Blacks would have also passed; and

16 WHEREAS, The Committee of Bar Examiners of the State Bar
17 of California acknowledged in 2017 that “[t]here is no empirical
18 evidence available that would support a statement that as a result
19 of its high pass line California lawyers are more competent than
20 those in other states, nor is there any data that suggests that there
21 are fewer attorney discipline cases per attorney capita in this state.”
22 That same year, the State Bar of California stated that “the

1 relationship between discipline rates and minimum competence .
2 . . is unclear at best” and as a result, there are doubts that “changing
3 the cut score would have any impact on the incidence of attorney
4 misconduct”; and

5 WHEREAS, Maintaining an unduly high cut score has had
6 serious, negative consequences for California, including limiting
7 the diversity of attorneys in the state and exacerbating the lack of
8 access to legal representation for many Californians. Far too often,
9 low- and middle-income Californians with critical legal
10 representation needs, including in divorce, child custody, unlawful
11 detainer, foreclosure, probate, and other civil matters, have been
12 unable to find and afford legal counsel to protect their critical legal
13 rights and interests; and

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

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

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

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

35 WHEREAS, On July 16, 2020, the California Supreme Court
36 unanimously took bold action to help the 2020 law school graduates
37 by (1) providing an online remote bar exam in October; (2) offering
38 them a temporary provisional license to practice law temporarily;
39 and (3) most importantly in the long run, permanently lowering
40 the passing score of the bar exam to 1390. With the passing score

1 of 1390, California will still have a passing score that is higher
2 than almost every other state in the nation; and

3 WHEREAS, On August 10, 2020, the California Supreme Court
4 chose not to lower the passing score retroactively and the reduced
5 score only applies prospectively. This decision particularly impacts
6 law school graduates who graduated in the past few years, scored
7 1390 or above, but under 1440, and whose plans to take the July
8 2020 bar exam were impacted by the COVID-19 global pandemic.
9 Such prior bar exam takers reasonably feel that they have been
10 unfairly disadvantaged by the California Supreme Court’s decision,
11 given that they meet California’s new standard for minimum
12 competency and exceed that standard for most states in the nation;
13 and

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

19 WHEREAS, The State Bar of California and the California
20 Supreme Court recognize that recent bar exam scores – those within
21 the last 5 years – are still valid for admission to the practice of law
22 by allowing those seeking admission to the practice of law to base
23 admission on a bar exam taken within the last five years. (Rules
24 of the State Bar of California, Rule 4.17(A)). In fact, the Rules of
25 the State Bar allow the five-year period to be extended if there is
26 good cause shown, so the California Supreme Court should also
27 reasonably allow for the recognition of older bar exam scores,
28 provided the applicant can show that they have stayed current in
29 their legal knowledge. (Rules of the State Bar of California, Rule
30 4.17(B)); and

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

35 WHEREAS, The retroactive recognition of older bar exam
36 scores benefits both law school graduates and the state as a whole.
37 It will provide more fair and humane treatment of the law school
38 graduates who have demonstrated sufficient proficiency to practice
39 law by reducing artificial barriers to entry that have
40 disproportionately harmed law school graduates of color.

1 Additionally, since the COVID-19 global pandemic has only
2 increased the legal needs of Californians, providing more
3 competent and diverse attorneys to represent them should help
4 increase their access to justice; and

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

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

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