

Proposed Legislation Would Allow Emergency Diploma Privilege in New York



Law grads in New York are a step closer to practicing law without taking the bar exam, with the introduction of a bill to authorize emergency diploma privilege during the ongoing state of emergency.

State Senator Brad Hoylman, chair of the N.Y. Senate Judiciary Committee, announced on Twitter Monday he is introducing a bill that would allow law graduates of ABA-accredited schools to be licensed to practice without taking the bar exam.

"Law school grads are rightfully concerned taking the Bar Exam in person poses health risks," Hoylman said Tuesday. "Public health always needs to come first. For graduates who are immunocompromised, an in-person exam could be deadly. For graduates who are low-income, working parents, or simply can't afford another few months of studying for the Bar, this bill will be a lifeline."

New York was one of the first states to cancel the administration of the bar exam in July, in response to the COVID-19 pandemic, and pledged to find a rational solution for September and came up with a controversial but compelling test seat rationing plan.

As the number of coronavirus cases continues to soar around the country, the licensing test has pointedly left out the most reasoned solution — an emergency "diploma privilege plus" grant.

As of recently, three states have adopted emergency diploma privilege for in-state graduates from ABA-approved law schools. Utah was the first state to allow law grads to practice law without sitting in for the Bar, back in April. Both Oregon and Washington followed suit and announced a temporary diploma privilege in late June. The Minnesota Supreme Court has gathered public opinions on diploma privilege and seems likely to make a decision soon. Also in April, the New Jersey Supreme Court announced it had postponed its bar exam for fall but stated that in-state law school grads would also be able to start practicing law ahead of the exam under the supervision of seasoned attorneys.

Due to the unpredictable nature of the pandemic, many states are still scrambling to make a decision, and a growing number of jurisdictions are changing the bar exam plans they adopted back in April. Florida, Texas, and Tennessee each opted for later dates or online tests in lieu of the in-person July exam.

Washington, D.C., Massachusetts, and Maryland are now offering online bar exams in October.

New York appears to be the first state to propose such a bill, even though the jurisdiction initially rejected the idea of diploma privilege in late March, stating that "the absence of an examination would create unacceptable risks that persons lacking minimum competence to practice law would gain admission in New York."

The legislation proposed by Hoylman, who has a law degree from Harvard, states that law graduates could still take the traditional bar exam if they want to practice law in another state, but that passing it would not be essential to join the New York bar, at least until the COVID-19 state of emergency ends.

The lobbying for diploma privilege has taken a new momentum in recent weeks, as legal academics in many states have jointly backed up emergency diploma privileges in meetings and letters with bar authorities.

Bar examinees across the country push for diploma privilege as COVID-19 cases are skyrocketing in many states. They argue that administering the bar exam in person in July and September would put test takers at risk of contracting the virus, even with added measures such as social distancing and masks as a requirement. Given that experts say there is little chance for the pandemic to halt in September, emergency diploma privilege seems like the obvious solution for law grads to practice law and get out of the current "career limbo."

A group called United for Diploma Privilege made up of recent law grads has been leading the charge.

"We support diploma privilege for all graduates of ABA-accredited law schools... This would be permanent admission to the Bar without ever needing to take the bar exam," wrote Berkeley Law School Dean Edwin Chemerinsky in an email to 2020 Berkeley Law grads, obtained by Bloomberg Law.

"That said, I remain doubtful that the California Supreme Court will grant this," Chemerinsky added. "But we will do our best to argue for this!"

State supreme courts and bar licensing groups have been monitoring Covid-19 developments while drawing plans that try to balance public health concerns with traditional arguments in favor of bar exams—to make sure new attorneys are competent and ethically grounded.

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