



# North Dakota House of Representatives

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## **Representative Zachary Ista**

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## **COMMITTEES:**

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Mr. Chairman, Madam Vice Chairwoman, and Members of the House Education Committee:

For the record, I am Rep. Zac Ista, District 43. Today I come before you with HCR 3023, which is a resolution for an optional interim study focused on workforce retention of attorneys educated in North Dakota.

From prosecuting heinous crimes to protecting the constitutional rights of the accused, from drafting wills and contracts to representing corporations in complex transactions, and from seeking justice for injured parties to defending businesses from frivolous claims, attorneys play a vital role throughout North Dakota. But as with so many sectors of our economy, the state's legal profession continues to grapple with workforce shortages. This is particularly true in rural North Dakota, with several counties lacking even a single licensed attorney within them; a total of 40 counties have 10 or fewer attorneys. But finding and retaining qualified applicants has been a struggle in larger metro areas, too. At my own office, for example, we recently have seen a precipitous drop in the number of applications we receive for any given job opening—and we have the state's only law school right in our backyard.

Making sure we have enough North Dakota licensed attorneys to meet the legal needs of our citizens and businesses starts with making sure we retain as many graduates of the University of North Dakota School of Law as possible to practice here in our state. That's exactly the issue HCR 3023 proposes to study. In particular, the resolution seeks to study what barriers exist to retaining these UND law school graduates in North Dakota, including both students from our state and neighboring states in the region and those who come to study law in North Dakota from further away, like Texas and Arizona.

Among the potential barriers the study would address are the requirements for admission to the State Bar of North Dakota. Currently, the only path to admission for new graduates of the UND School of Law is to successfully pass the Uniform Bar Examination, which is offered twice yearly in February and July and which 36 states use to assess the competency of bar applicants. The UBE is coordinated by the National Conference of

Bar Examiners (NCBE) and includes an essay portion (six 30-minute questions), two performance tasks (90 minutes each), and a multiple-choice component (six hours, 200 questions). If a test taker receives a sufficient score (260) and successfully passes the character and fitness investigation, that person will be eligible for admission to the North Dakota bar.

To be sure, admission by bar examination is how the overwhelming number of attorneys in North Dakota and nationwide have become licensed practitioners. It is a tried and true (or at least well-established) method of assessing attorney competency. But every year, otherwise high-achieving law students find themselves as the recipients of bad news when bar results are released. Whatever the reason, these students who demonstrated their competency throughout three years of law school suddenly are left unable to practice law in North Dakota and forced to wait several months for their next opportunity to pass the bar. I have experienced this heartbreak in my own practice, where very qualified interns who demonstrated an unequivocal ability to do the job for which they were hired came up just short on the bar exam. Even though we had no doubt of their ability to be outstanding attorneys (as witnessed by their having done so for several months in an actual workplace), we had to look elsewhere for alternative applicants because of the results of one exam.

This reality—along with conversations with new UND law school dean Brian Pappas a—motivated me to explore whether any other jurisdictions offer alternative measures of assessing new attorney competency. That search quickly led me to Wisconsin, which offers admission to its state bar by “diploma privilege” for graduates of its two in-state law schools (Marquette and the University of Wisconsin). This is not a new concept for Wisconsin; rather, it dates all the way back to 1870. During the pandemic, at least five additional states adopted temporary diploma privilege eligibility options, with other states and national attorney groups still weighing permanent changes.

On its face, diploma privilege is a relatively straightforward concept: if you graduate from an in-state law school and meet certain requirements during your legal education, you are automatically admitted to the state bar without separately having to pass a written bar examination. In Wisconsin, for instance, those additional requirements include mandatory coursework (ranging from criminal law and contracts to ethics and evidence), a sufficient number of credits in elective courses, and attaining a minimum grade point average (in addition to passing the state’s character and fitness review).

Is this diploma privilege model a good one? Does it ensure high-quality, competent attorneys? Does it help retain law school graduates to practice in the state where they were educated? And would it be a good fit here in North Dakota? The honest answer to all these questions is “I don’t know.” That’s exactly why I am proposing this study: to figure out if diploma privilege or any other alternative methods of assessing attorney competency could work in North Dakota and have a meaningful positive impact on retaining UND-educated lawyers to practice here. Ultimately, the answer could be “no”; we could find out that our current admission rules already are well-calibrated

to meet our needs and assess our law graduates. Alternatively, we could find that an idea like diploma privilege would help retain graduates and not compromise attorney quality. Again, finding these answers (and perhaps uncovering more questions in need of answers) is exactly the goal of the proposed study.

But I want to make one thing abundantly clear: it is fundamental and non-negotiable that we ensure North Dakota-licensed attorneys are competent to practice law in this state. Under no circumstances would I accept changes to our admission rules that lower the bar for attorney competency. Our citizens and businesses deserve to know that all licensed attorneys in this state have achieved and demonstrated a baseline level of competency. That's why I am adamant that this study is not being proposed with a thumb on the scale in favor of any outcome. While I believe diploma privilege and other alternative methods of evaluating attorney competency certainly are well worth studying, maintaining a high-level of attorney competency must be the guiding principle above all else.

With that, Members of the Committee, I thank you for your consideration of HCR 3023 and your partnership on ideas that can help address our workforce crisis across all industries and professions. I believe this study could lead to solutions that do just that. That's why I urge a do pass recommendation, and I stand ready to answer any questions.