



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Trends in State Immigration Laws | March 14, 2021 | OAS Episode 125

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“Unfortunately, immigration reform has been in gridlock for some time at the national level, but state legislators have found numerous ways to reach across the aisle and enact pragmatic solutions, particularly in reclaiming the authority that the federal government has attempted to preempt.”

That was Ann Morse, federal affairs counsel for NCSL’s Immigrant Policy Project and a longtime observer of state legislation related to immigrants. Morse is my guest on the podcast.

Morse recently issued a new report, “Immigrant Policy Project: Report on State Immigration Laws, 2020.” It summarizes state laws and resolutions enacted between January and December 2020 and trends in immigration legislation throughout the year.

Morse discusses the findings in the report, including a trend to address occupational licensing laws to reduce barriers to employment for foreign trained professionals who are in the country legally. She also talked about legislation related to education, law enforcement, driver’s licenses and more.

It’s been 35 years since the federal government has enacted comprehensive immigration legislation and Morse explains how that has motivated states to take action on their own and the possibility of action at the federal level under the new administration.

Ann, welcome to the podcast.

Ann: Well, thanks Ed. It’s great to be here today.

Time Marker (TM): 01:51

Ed: Ann, thanks for taking the time today to discuss state immigration legislation. You've just issued a new report on trends in immigration legislation in 2020. Can you talk about the main trends you're seeing?

Ann: I'm really delighted to talk about our new report. As you know, states have long been active in a wide range of policies related to immigrants: from health to human services, to nutrition assistance and drivers' licenses, to education and law enforcement.

Most recently, occupational licensing has become a surprising new trend and an area where NCSL has done a lot of work, particularly for populations that are disproportionately affected by barriers to licensing. One of those populations is foreign trained professionals. These are folks here legally, with authorization to work by the federal government, but who are either out of work or underemployed in their profession.

States have realized that there are some changing demographics they're seeing and labor shortages that are factors in our efforts to reduce barriers to licensing. States' high median age, retirement of Baby Boomers, and shortages in key industries such as construction, health and hospitality are causing states to respond.

Places like Maryland and Minnesota have created taskforces, Illinois, Michigan and Nevada have created offices for immigrants, and there is a Midwest regional coalition creating new education and training.

This past year in 2020, New Jersey, New Mexico and New York were the most recent states to act, and they passed legislation allowing professional licenses to immigrants regardless of citizenship, and Washington State established a work group to help international medical graduates get clinical training.

TM: 03:20

Ed: Now, it's hard to have any discussion about any policy these days without asking how much the COVID-19 pandemic has influenced it. So, how much has the pandemic affected the sort of legislation that was introduced?

Ann: Well, first I have to say that we saw a real drop-off in state laws and resolutions this year with the number of laws dropping 30% as state legislatures turned their attention to healthcare and economic relief for their residents.

You may remember the federal CARES Act, Coronavirus Aid, Relief and Economic Security Act. It was enacted in March 2020, providing aid to low- and moderate-income individuals. But what people often don't know is that 5 million citizen and noncitizen children of immigrant families did not receive federal help because they required that both parents have social security numbers.

What several states did was take the initiative to extend their healthcare to low-income residents including legal and unauthorized immigrants who were not eligible for the federal

help. Colorado and Illinois provided new health benefits, and Vermont and Minnesota extended human services assistance.

TM: 04:20

Ed: Now, immigration is often seen as a highly partisan issue, but we know there has been bipartisan support in the past in Congress. Are you seeing that in the state legislatures?

Ann: Yes. Unfortunately, immigration reform has been in gridlock for some time at the national level, but state legislators have found numerous ways to reach across the aisle and enact pragmatic solutions, particularly in reclaiming the authority that the federal government has attempted to preempt.

For example, when we had federal real ID legislation, it preempted state laws and drivers' licenses, and states have, since that law was passed... 16 states and D.C. now offer drivers' licenses to unauthorized residents, making sure that they can drive safely and have insurance.

NCSL recently held a state policy 101 on immigration and invited our co-chairs of the taskforce on immigration in the states to talk to us. Senator Denis of Nevada and Senator McCollister of Nebraska talked about their successes reaching across the aisle to pass legislation to ensure unauthorized immigrants were driving safely and had insurance.

TM: 05:19

Ed: Now, I think the people maybe who don't pay too much attention to this area often think all immigration legislation and regulation is solely the domain of the federal government. Can you talk about why that is not the case?

Ann: Oh, absolutely. Let me first differentiate between immigration policy and immigrant policy. The federal government sets the rules on who and how many people can enter the United States for how long, and whether they are eligible to work.

State and local governments, however, provide education, healthcare and social services to the immigrants after they arrive, and they partner with the federal government on things like criminal enforcement such as gangs and human trafficking.

As we know from our study of state budgets, states are responsible for the bulk of funding education and healthcare. They must also implement federal laws such as immigration reform and welfare reform, and they must also comply with court decisions such as the 1982 Supreme Court decision that required K-12 public education regardless of the student's immigration status.

States are also crafting local solutions to immigration challenges, whether in enforcement or in education and training, such as providing English language and citizenship assistance.

We've been reporting on state legislative activity related to immigration for a long time and we know now that state legislatures consider approximately 1,300 bills every year and enact about 140 laws each year related to immigrants and refugees.

TM: 06:40

Ed: Now, the last time the federal government enacted comprehensive immigration reform was 35 years ago. My understanding is that that lack of action at the federal level was what motivated states to take some of these matters into their own hands.

Can you walk us through the history of how states became so involved in immigration issues, or maybe immigrant issues more aptly?

Ann: There are three major laws that affected states' responsibilities. I'm going to just focus on one today. We had the Refugee Resettlement Act of 1980, which created a partnership between federal and state governments to resettle refugees. We had a '96 welfare law which cut 24 billion dollars of benefits from legal immigrants and we addressed that and got half of that money restored.

But I think the biggest example for us to consider is the Immigration Reform and Control Act of 1986. As you mentioned, this was the last time we did comprehensive immigration reform, and that law was meant to address both legal and illegal immigration. In the words of the day, it was opening the front door to legal immigrants and closing the back door to illegal immigrants.

It added enforcement measures such as requiring employers to verify that new hires had permission from the federal government to work. It also barred newly legalized immigrants from many federal programs, thus shifting costs to states such as medical care and other safety-net programs.

State and local governments worked hard to get an impact assistance grant, the so-called SLIA program, State Legalization Impact Assistance Grant, which offered 4 billion dollars to help underwrite the costs of education, healthcare, mental health and other processes to help these immigrants gain legalization in this country.

Since Congress has been so slow to act on reforms since 1986, states became really active in addressing challenges in a number of policy areas. We first started tracking legislation in the mid-1980s and 1990s where social services, healthcare and nutrition were the big policy drivers. Then after 2001, states started looking at in-state tuition and the Dream Act to provide higher education assistance.

So, remember that Plyler vs. Doe required states to offer K-12 education, but then was silent on what happens after they graduate from high school. So, these students with no path to legalization were left high and dry with no way to continue their education and no access to work. It was meant to be short-term assistance to keep kids learning and try to find a way to create a path to legalization for them.

Later trends were around drivers' licenses, as I've mentioned, E-Verify, which is the work authorization requirement, and then things like public safety at the local level and where there should be collaboration with the federal government. Notably, Arizona's SB 1070 tried to expand the state rule on immigration enforcement, but that was largely struck down by the Supreme Court.

Then we had a series of things around so-called sanctuary policies and how people who have been in jail for misdemeanors were released and whether they should be turned over to the federal government, or whether they had done their time and should be reunited with their families.

States also did a number of things related to human trafficking and assistance to victims. They've looked at things like integration efforts and naturalization, and then moved on to professional licensing, seeing that they were having such labor shortages and there was untapped talent in their communities.

TM: 10:00

Ed: Thanks, Ann. We're going to take a quick break and come back to discuss the likelihood of immigration legislation at the federal level, how state legislators can have a say in that process, and whether state lawmakers will welcome such action.

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TM: 10:55

Ed: I'm back with Ann Morse. So, speaking of federal action or inaction on immigration, the new administration is talking about a comprehensive bill. As a longtime observer of immigration legislation, can you talk about whether you think we're likely to see one big bill this year, or maybe a series of smaller pieces of legislation?

Ann: Boy, that is the question of the year, Ed. Everybody is trying to figure that out. The truth is that we know our immigration system is way out of date and it's taken, in the past, several years to get from introducing comprehensive legislation to approval by both the House and the Senate.

So, I have great optimism that there will be some breakthrough this year to get comprehensive reform at least discussed. I think the realistic answer is that the House is going to cue up some of parts of the bill such as reforming DACA and giving them a path to legalization, which passed with bipartisan support in the past, as well as the Farm Worker and Modernization Act, which helps farmers and others get access to agricultural labor in a more efficient manner.

So, either could happen; it's hard to say. It's a complex package to put together, but each area is solvable, and I have hope.

TM: 12:09

Ed: So, how do the listeners in our audience, the state legislators, how do they get their voices heard in this discussion in D.C.?

Ann: Oh well, through working with their delegations of course, but also by working with NCSL, in particular our Law, Criminal Justice and Public Safety Committee, which advocates for NCSL's policy and immigration reform.

There is also our Taskforce on Immigration in the States, which shares best practices at the state level and provides education and outreach to advance national reforms. So, we'd love to hear from anyone who wants to help support that effort.

And coming up soon on March 19th, NCSL, along with our local government partners, is hosting a briefing for congressional staff on state and local priorities on immigration reform. We hope lots of people will participate in that one.

TM: 12:51

Ed: Well, great, that's just later this week when people will hear this podcast. Let me ask you, do you think state legislators would welcome big federal action in this area, or do they prefer the more state-centric approach, or is it both?

Ann: Actually, it's both. I had one answer and I think I'm going to change it. States obviously can't change federal admission or deportation laws or request employment visas. All of those authorities still rely on the federal government to act.

But states have floated the idea of asking for state-specific employment visas where they have dire need for employees, whether it's high tech or health professionals. I tell you, the number one thing I've heard from state legislators in the past couple of years is the real shortage in both rural and urban areas for health professionals across the board: doctors, nurses, assistance with long-term care, home care. It's just daunting.

So, I think they'd love to have a bit of a voice in saying: we could use some immigrants here to help us out with our short-term labor shortage, and just listen to our best advice and examples.

TM: 13:57

Ed: Well, Ann, I always enjoy talking about this issue with you because you have such an encyclopedic knowledge of it. And I'm wondering, before we wrap up, if there's anything else you'd like to share with our listeners.

Ann: Yes. My final thing would be that states have built up quite a bit of expertise in responding to immigration in their communities, and it would be great for legislators to be able to share their best practices with their federal partners and finally achieve pragmatic immigration reform for our country.

Ed: Ann, thanks again for sharing your expertise with us. Take care.

MUSIC

Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of “Our American States.”