

March 26, 2020

ABOUT

Building a Welcoming Commonwealth for Virginia's Diverse Immigrant Communities

As our families, communities, and state grapple with the novel coronavirus, social distancing, and their economic effects, we are continually reminded that we're in this together and we need public policy that works for all of us, no exceptions. For years, immigrant communities and advocates in Virginia have been asking for basic changes to reduce barriers for immigrant communities. This year, state legislators made a series of good choices that will help immigrant families get the information they need, have fewer concerns when interacting with local first responders, and be able to take care of their family's needs with less fear. These positive changes will help immigrant families and their wider communities weather the current crisis and contribute to rebuilding our economy when the current restrictions on activity can be safely lifted. More work remains, however, including educating the public about and mitigating new risks to community members created by participating in public systems that, without protections, makes their information obtainable by ICE for civil immigration enforcement purposes.

Access to Lawful Driving

The two top priority issues for the Virginia Coalition for Immigrant Rights (VACIR) and other immigrant advocates during the 2020 legislative session were removing barriers to in-state tuition and access to lawful driving regardless of immigration status, and legislation passed on both issues. These changes, hopefully with additional privacy protections, will improve the lives of hundreds of thousands of immigrant Virginians and their family members. Latinx and Asian American communities in Virginia will particularly benefit, since 53% of Virginians who lack full legal status were born in Central America or Mexico and another 25% were born in Asia.

Removing barriers to lawful driving is a long-sought improvement that will increase safety on the road, reduce community fear, and boost state revenue by making sure everyone is trained, tested, licensed, and insured. After years of being blocked in a House subcommittee and Senate committee, legislation passed this year that will provide driver privilege cards for Virginia residents who cannot prove legal presence in the United States yet can prove their identity to the satisfaction of the Department of Motor Vehicles, have filed income taxes in Virginia, passed the driver's license written and road tests, and are not in violation of insurance requirements. These cards will be available starting January 1, 2021, and will appear identical on their face to a standard license yet will have identifying notations on the back. Additional privacy protections should be considered as Virginia moves to implement this important stop-gap legislation.

This is not everything our communities wanted and needed. With Virginia creating a two-part (standard and REAL ID) license system as part of implementing the federal REAL ID law, including Virginia residents regardless of immigration status



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in the standard license system became more politically viable. This is because standard licenses will not be able to be used to board airplanes or enter federal facilities after REAL ID is fully implemented (previously scheduled for October 1, 2020, now delayed), removing a set of concerns that some policymakers held about expanding access. Further, with increased levels of federal immigration enforcement, there are serious concerns about creating a third-tier license that will likely only be held by individuals who are disqualified due to immigration status from having a standard or REAL ID license. By removing barriers to standard licenses rather than creating a new driver privilege card system, Virginia would reduce the potential for both abuses of Virginia's DMV databases and everyday discrimination during traffic stops or retail transactions. And community members who may fear getting a third-tier driver privilege card would be more comfortable getting a standard license. Even with additional privacy protections, community members will need to balance the real need and desire to be able to participate in Virginia's system of lawful driving and the risks of providing information that may be obtainable by ICE.

As a result, TCI and other advocates, including the VACIR driver's license working group and the Drive Virginia Forward coalition, have worked tirelessly since mid-2019 on removing the immigration status requirements from the standard driver's license. Unfortunately, due to opposition by some state senators, we were unable to pass standard driver's licenses this year. Even so, the driver privilege card legislation that passed will allow hundreds of thousands of Virginians to participate in our system of driver training, testing, and licensing for the first time, boosting state revenue, increasing road safety, and reducing fear for all of us. We hope that in future years the political will can be mustered to choose the simpler, more equitable path of including everyone in the standard driver's license.

Removing Barriers to In-State Tuition

The other major priority for immigrant rights advocates during the 2020 legislative session was removing barriers to in-state tuition, and on this issue we also saw major progress. This will provide a pathway to better jobs and opportunities, benefiting both students and the state economy. While students with Deferred Action for Childhood Arrivals (DACA) status are currently eligible for in-state tuition, as clarified by a 2014 memo from the attorney general, there are other students who are ineligible for DACA due to new enrollment being cut off in 2017 or other factors. And even students who currently have DACA were at risk of losing in-state tuition next school year because of the Trump administration's attempts to end the DACA program, which is expected to be ruled on by the Supreme Court in June.

As a result, there was new urgency this year to remove Virginia's barrier to in-state tuition for undocumented students. With support from TCI, the Virginia



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Intercollegiate Immigrant Alliance and NAKASEC led a VACIR working group to lift up the voices of impacted students and push forward legislation to provide access to in-state tuition to every Virginian, regardless of immigration status. The legislation that passed this year will provide access starting on July 1, 2020, to in-state tuition for all Virginia high school graduates who can show they or their parents filed Virginia income taxes for the past two years or were exempt from filing due to their incomes being below Virginia's filing threshold. Students and their families will still face significant cost challenges due to bans on federal financial aid for undocumented students, but the state will be a partner, helping young Virginians have a fair chance to increase their skills and productivity. Advocates are now working (remotely) with university stakeholders to make sure that the students who will benefit know about these changes and the in-state tuition application process proceeds smoothly.

Information for New Americans

On top of these major victories, there were a number of other positive changes in Virginia policy passed during the 2020 legislative session that will help immigrants get information they need and reduce fear of interacting with first responders. While the work to pass these improvements occurred before the full scope of the public health emergency became clear, the changes will make it easier for our immigrant neighbors to weather the crisis and help rebuild the economy when the current restrictions are lifted.

TCI has worked for several years with Delegate Kathy Tran to create an Office of New Americans to help immigrant families get culturally and linguistically appropriate help navigating state, local, and private-sector services. Most of the responsibility of the Office would be directing people who are immigrants to existing local service providers and state agencies, and coordinating efforts for statewide and business economic, linguistic, and civic integration. Virginia is home to around 750,000 authorized immigrants, most of whom are not refugees or asylees and therefore are ineligible to receive services through the federally-funded Office of Newcomer Assistance. A wide array of Virginia communities will benefit, since Virginia's diverse immigrant families live, work, and learn in every city and county of the commonwealth.

Thanks to the good work of the bill patrons and other advocates, legislation carried by Delegate Tran and Senator Ghazala Hashmi passed this year, along with funding in the budget to establish the Office and accompanying advisory board. (The law establishing the new office will not go into effect until July 1, 2020; unfortunately, it appears that the current health crisis and resulting economic disruptions will continue well beyond the next few months. We do not know if the disruptions from social distancing will impact the ability of the Department of Social Services to establish the Office by July 1.)



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Policing, ICE Cooperation, and Increasing Community Trust

Two particularly timely bills that were championed by Legal Aid Justice Center passed this year to reduce community fear of interacting with police, sheriffs, and other first responders and reduce the jail-to-deportation pipeline. House Bill 262 protects victims and witnesses of crimes from being asked about their immigration status in the course of investigations of the crime, which should help members of immigrant communities be more comfortable reaching out to local first responders. This is already the written policy in some localities, but not all, and Virginia's legislature passing a statewide policy sends a welcoming message.

Legislators also passed a bill to provide local flexibility on whether to report individuals who are jailed on misdemeanor charges to ICE (prior law required reporting on both misdemeanor and felony charges). The same legislation also changes state policy so that young people are only reported to ICE if they have been adjudicated delinquent or convicted of certain felonies (prior law required reporting when the young person was merely charged with certain felonies) and the Department of Corrections is only required to report people with felony convictions, rather than requiring reporting of people with either felony or misdemeanor convictions. These changes will help disrupt the jail-to-deportation pipeline that punishes immigrants more severely for the same offenses as other people by subjecting them to both the criminal legal process and deportation process rather than just the criminal legal process. And by reducing the chances that a minor misdemeanor charge will lead to deportation proceedings, these changes should also reduce fear of local law enforcement officers in immigrant communities.

Education Funding for English Learner Students

As part of TCI's work on building more adequate and equitable state funding for education, a particular focus has been the urgent need to provide more support for English Learner (EL) students. Going into the 2020 session, the state only funded one English language instructor for every 59 EL students, well below many of Virginia's neighboring states. The consequences of insufficient staffing for EL students are clear. In 2019, pass rates for EL students were 47.5 percentage points lower than non-EL students on the reading SOL test – the largest gap of any major student subgroup in state SOL data. The gap was even larger between Latinx EL and all non-EL students (52 percentage points), demonstrating that staffing as it stands perpetuates racial inequities in schools.

In fall 2019, the Virginia Board of Education released newly prescribed Standards of Quality proposing an increase in EL staff and tying staffing ratios to student language ability, so students who need the most support get the most support. The recommendations would increase instructional positions for students with the lowest English proficiency (1 teacher to 25 students), and provide continued



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support at different staffing levels for students who are more proficient and on their way to fluency. The governor's proposed budget partially funded these standards, providing \$27.6 million to increase that to one instructor for every 50 students in both years of the budget. The negotiated budget between the House and Senate doesn't go quite as far, instead providing \$20.9 million to get to one instructor for every 50 students by the second year of the budget, rather than the first. While clearly falling short of the need, the additional funding and accompanying legislation will help to fund more instructors for children of immigrant families and help all Virginia children reach their full potential.

Removing Barriers to Health Coverage

Federal rules impose a five-year waiting period for lawful permanent residents ("green card" holders) to access health insurance through Medicaid (there are exceptions to this rule for pregnant women and in some other circumstances). Virginia is one of just six states to have an additional barrier of requiring a 40-quarter (10 year) work history, concurrent with the federal five-year requirement, before qualifying for Medicaid. This barrier, which is known as the "40 quarter rule," overwhelmingly harms people of color. Roughly 63% of Virginia adults who are non-citizens and may be eligible for Medicaid based on their income and time spent living in the United States are uninsured. Of that group, 83% are Latinx. Through advocacy work by the Virginia Latino Advisory Board, the Virginia Poverty Law Center, TCI, and other stakeholders, the governor's proposed budget included \$4.5 million in funding to eliminate this barrier. The legislature chose to retain this funding in their budget, allowing more Virginians to access much-needed health care.

Moving Forward

These victories were built on years of prior work by many advocates. More work remains, most immediately to make sure that every Virginia community has culturally and linguistically appropriate information about how to "flatten the curve" and get the help they need to keep themselves, their families, and their businesses afloat in this trying time. A number of Virginia and national organizations have put forward recommendations for how to respond to the present moment. Looking forward, policymakers should build on the improvements of this legislative session by increasing privacy protections, funding the full recommended staffing levels for EL instructors, and taking the better approach on lawful driving by removing barriers to standard driver's licenses. TCI is committed to continuing to work with our partners that are grounded in immigrant communities to make sure the improvements passed during the 2020 session are implemented in the most effective possible manner, to respond to the needs of our immigrant neighbors, and to make sure public policy responses at this time work for all of us, no exceptions.

— Laura Goren, Research Director

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