



2018 Legislative Session Review

BY JEREMY SCHUPBACH

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This article reviews the 2018 legislative session, focusing on bills of interest to the CBA.

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The 2018 legislative session was another busy, involved, exciting, and exhausting session for the CBA. Headed into the 2018 elections, this session was marked by big issues, the first expulsion of a member since 1915, and political positioning for the upcoming mid-term elections. The CBA both advanced several bills to improve the practice of law and helped kill several dangerous and misguided attempts to harm various practice areas and the judicial branch. In short, it was a crazy, contentious, and yet successful session for the CBA and its members.

As was the case in 2017, the House and Senate again split political control during this session. The Democrats controlled the House of Representatives over the Republicans by 36 to 29 seats. By contrast, the Senate was in Republican hands, 18 (R) to 16 (D), with one unaffiliated senator.

This session again had fewer lawyer legisla-

tors than the historical average. This presents both an opportunity and challenge as the CBA works with legislators on complicated measures and technical concerns on matters of law and seeks to educate the legislature about who we are and what we do. This situation is not likely to change much as a result of the November election, though there may be a slight increase in the number of lawyer legislators. In 2018, there were 13 lawyers, according to the Legislative Drafting Office.

It is important to note that the CBA develops public policy and takes positions on legislation through its Legislative Policy Committee (LPC), a committee of 13 members appointed by the CBA president and representatives of the sections. These 13 members—assisted by point people and leadership from each section—consider the merits of bills and decide whether the CBA should adopt a position, and, if so, what that position will be.

The 2018 Session in Brief

This year, 721 bills were introduced throughout the session, and 421 have been passed and signed into law. An additional two bills were allowed to become law without the governor's signature (HB 18-1086 and HB 18-1093), and Governor Hickenlooper vetoed nine bills, his personal record (HB 18-1011, HB 18-1083, HB 18-1181, HB 18-1258, HB 18-1263, HB 18-1427, SB 18-156, SB 18-179, and SB 18-223). All bills considered during the session are available on the Colorado General Assembly's website, <http://leg.colorado.gov/bills>.

CBA Legislative Action Summary

The CBA tracked and worked on 41 bills in the 2018 session. The Appendix to this article lists each bill by number, title, CBA position on the bill, and outcome. The CBA opposed 13 bills, supported 16 bills, monitored with no position two bills, and sought amendments

to 10 bills—though we amended or changed some bills we supported as well. We achieved our intended outcome on 34 bills, for an overall success rate of over 80%—an outstanding overall achievement for our LPC at the Capitol.

Major Legislation and Hot-Topic Bills

The 2018 session was framed by several issues: marijuana, consumer data privacy, transportation, Public Employees’ Retirement Association (PERA) funding, the opioid epidemic, and block chain financing. For the most part, the CBA monitored the issues and the bills, addressing them without taking a position or weighing in.

Marijuana issues—a perennial topic at the legislature—featured bills addressing public funding for the industry (HB 18-1011), use for treating children with autism (HB 18-1263), and tasting rooms (HB 18-1258). The governor vetoed all of these bills after they were passed by the legislature.

With respect to transportation funding, this year’s effort at a grand compromise was SB 1. This bill was a compromise proposal by Democratic and Republican leaders that passed by a 36 to 29 margin in the House with only two days left in the session. The bill would generate \$50 million annually in transportation spending and use money from SB 17-267 to borrow more than \$2 billion in bonds.

PERA funding (SB 200) was another big legislative topic affecting many people in the state. A last-minute compromise in the wee hours of the session allowed the bill to move forward. Early indications are that this bill is a step forward to securing PERA for the future.¹

The legislature also undertook several bills to begin to address the growing opioid epidemic in Colorado. SB 18-022, HB 18-1003, HB 18-1136, and SB 18-040 were all aimed at different aspects, from funding to education, treatment, and prevention measures. This is an area we expect the legislature to continue to focus on in coming sessions.

CBA Priority Bills

The legislature passed all but one of the bills created or promoted by CBA sections this year. We worked with a very supportive legislature, including several new legislators, to achieve bills

that were a priority for our sections. In addition, we worked with several other stakeholder groups and leadership from both parties to promote and achieve our legislative agenda.

SB 18-180: The Colorado Uniform Trust Code

Under current law, the administration of trusts is generally governed by certain provisions of the probate code. SB 18-180 repeals many of these provisions and creates a new Colorado Uniform Trust Code outside the probate code to address trust administration. The new trust code includes provisions concerning:

- judicial proceedings;
- representation;
- creation, validity, modification, and termination of trusts;
- duties and powers of trustees; and
- liabilities of trustees and rights of persons dealing with trustees.

The bill also makes conforming amendments. The effective date is January 1, 2019.

SB 18-166: Changing the Maximum Jail Sentence for Certain Crimes from One Year to 364 Days

Under current law, the maximum jail sentence for a class 2 misdemeanor, misdemeanors without a fixed statutory penalty, and municipal ordinance violations is one year. As originally drafted, SB 18-166 changes the maximum jail sentence to 364 days. The bill would help legal U.S. immigrants in Colorado avoid deportation for certain low-level crimes.

As amended by the Senate, the bill creates the legislative interim committee on misdemeanor sentencing, to meet during the 2018 interim. The committee consists of three senators and three representatives. The Senate president appoints two senators and designates the chair of the committee, and the Senate minority leader appoints one senator. The Speaker of the House of Representatives appoints two representatives and designates the vice chair of the committee, and the House minority leader appoints one representative. The interim committee may meet up to five times during the interim and may propose up to five exempt committee bills.

The bill directs the interim committee to, at a minimum, study:

- the collateral consequences of a crime with a sentencing range of one year or greater;
- the fiscal impact of misdemeanor sentences on state and local authorities; and
- the appropriate penalty level for offenses that are deemed misdemeanors.

This bill failed to pass the legislature this session.

HB 18-1385: Changes to Support Obligations in Domestic Relation Actions

Before the enactment of the 2017 Tax Cuts and Jobs Act (the Act), spousal maintenance was capable of being classified as deductible by the payor spouse and taxable to the recipient spouse for federal income tax purposes. As a result of the Act, commencing in 2019, spousal maintenance is not deductible by the payor spouse and is not taxable income to the recipient spouse. HB 18-1385 was necessary to conform the statutory guideline advisory amount of maintenance, and the definitions used for calculating gross income and adjusted gross income for maintenance and child support awards, to federal law.

The bill adjusts downward the advisory guideline calculation of the amount of maintenance where the maintenance awarded is not deductible by the payor spouse and is not taxable income to the recipient spouse. It also amends the definitions of “gross income” and “adjusted gross income” to properly reflect the tax implications of maintenance obligations, and adjusts the definitions of “gross income” and “adjusted gross income” in calculating child support obligations to reflect the tax implications of maintenance obligations.

The effective date is August 8, 2018.

SB 18-109: Authorization for Notaries Public to Perform Notarial Acts Using Audio-Video Communication

Current law requires an individual who wishes to have a document notarized to appear personally before the notary public. SB 18-109 authorizes notaries public to perform a notarial act on behalf of an individual who is not in the notary’s physical presence, but only with respect to an electronic document.

To perform a “remote notarization,” a notary must use a tamper-evident electronic system that conforms to standards established by the Secretary of State’s rules, including using real-time audio-video communications and keeping an audio-video recording of the notarization for at least 10 years. The bill establishes standards that a notary must comply with to have satisfactory evidence of the identity of the person seeking the remote notarization. A notary is prohibited from using information collected during a remote notarization other than as allowed by applicable federal or state law.

The bill appropriates \$42,895 to the Department of State for the implementation of the act.

This bill failed to pass the legislature this session.

Uniform Laws

The Uniform Law Commission was critical to the success of the CBA’s effort to pass SB 180 (the Colorado Uniform Trust Code), discussed above. We have been working on this legislation for a number of years, and with our version of the uniform bill adopted, Colorado is better aligned with the majority of other states.

Other Interesting Bills

The CBA worked on a number of other interesting pieces of legislation throughout the session. A brief synopsis of these bills, the CBA’s position on them, and the outcomes follows.

HB 18-1128: Strengthening Protections for Consumer Data Privacy

Except for conduct in compliance with applicable federal, state, or local law, HB 18-1128 requires covered and governmental entities in Colorado that maintain paper or electronic documents containing personal identifying information to develop and maintain a written policy for the destruction and proper disposal of those documents. Entities that maintain, own, or license personal information, including those that use a nonaffiliated third party as a service provider, must implement and maintain reasonable security procedures for the personal information. The notification laws governing disclosure of unauthorized acquisitions of unencrypted and encrypted computerized data

are expanded to specify who must be notified following such unauthorized acquisition and what must be included in such notification.

The effective date is September 1, 2018.

HB 18-1261: The Colorado Arbitration Fairness Act

HB 18-1261 applies to certain consumer and employment arbitrations and

- establishes ethical standards for arbitrators;
- specifies that any party may challenge in court the impartiality of an arbitrator or arbitration services provider;
- requires specified disclosures by arbitrators and arbitration services providers;
- authorizes injunctive relief against an arbitrator or arbitration services provider who engages in certain specified acts; and
- specifies that a right conferred by the bill may not be waived before a demand or filing of a claim, and only afterward by a signed waiver.

HB 18-1262: The Arbitration Services Provider Transparency Act

HB 18-1262 requires arbitration services providers that administer consumer or employment arbitrations to collect, publish, and make available specified information on those arbitrations administered in the previous five years. The bill amends a provision of the Uniform Arbitration Act to make the bill effective.

While HB 18-1261 and HB 18-1262 did not pass this year, we expect that transparency and disclosure around and within arbitration will be a major topic for the legislature and the CBA in coming years. These bills represent the beginnings of a larger conversation.

SB 18-015: Protecting Homeowners and Deployed Military Personnel Act

SB 18-015 directs a peace officer to remove a person from a residential premises and order the person to remain off the premises if the owner or owner’s authorized agent (declarant) swears to a declaration making specified statements concerning ownership of the premises and the lack of authority for the person or persons who are on the premises to be there. The peace officer

must allow the person a reasonable opportunity to obtain evidence of his or her authority to be on the premises.


A declarant:

- agrees to indemnify a peace officer and his or her agency for acts and omissions made in reliance upon the declaration; and
- is liable for actual damages, attorney fees, and costs for any false statements made in the declaration.

If the declaration includes a statement that the property has been altered or damaged, or if the peace officer sees evidence of alteration or damage, the peace officer must collect the personal information of the persons removed and provide it to the declarant. A person removed from the property pursuant to the bill who alters or damages the property is guilty of a class 1 misdemeanor.

The effective date is July 1, 2018. The bill applies to requests for removal and offenses committed on or after that date.

Conclusion

This was my fourth session representing you at the Capitol. I consider it an honor to work with the Association and represent so many fine and thoughtful individuals. The CBA’s success is the result of hard work by a great many people who volunteer their time and expertise to advance and defend the practice of law and our agenda. It is a tremendous privilege to work with these CBA members, and I look forward to many more years of leadership and success under the gold dome. 



Jeremy Schupbach is the CBA director of legislative relations and the coordinating editor for *Colorado Lawyer’s* Legislative Matters articles.

Readers are encouraged to contact him any time they would like more information about bills or other legislative matters that may relate to or affect the legal profession and the practice of law—(303) 824-5309, jschupbach@cobar.org.

NOTE

1. <https://denver.cbslocal.com/2018/06/22/pera-colorado-pension-reforms>.

2018 COLORADO LEGISLATIVE SESSION: BILLS TRACKED BY THE CBA

BILL NUMBER	SPONSOR(S)	NAME	POSITION
HB 1011	Cheri Jahn, Tim Neville, Daniel Pabon, Kevin Van Winkle	Marijuana Business Allow Publicly Traded Owners	Amend
HB 1050	Rhonda Fields, Jonathan Singer	Competency to Proceed Juvenile Justice System	Support
HB 1059	James Wilson	Require 911 Call	Oppose
HB 1089	Adrienne Benavidez, Rhonda Fields	No Monetary Conditions of Bond for Misdemeanors	Support
HB 1102	John Cooke, Dylan Roberts, Cole Wist	Extend District Attorney Fellowships to 18 Months	Support
HB 1104	Jessie Danielson, Kent Lambert, Dominick Moreno	Family Preservation for Parents with Disability	Amend
HB 1128	Jeff Bridges, Lois Court, Kent Lambert, Cole Wist	Protections for Consumer Data Privacy	Oppose
HB 1152	John Cooke, Polly Lawrence	Judicial Administrative and Budget Records Subject to Colorado Open Records Act	Amend
HB 1156	Chris Holbert, Pete Lee	Limit Penalties for Juvenile Truancy	Support
HB 1177	Don Coram, Stephen Fenberg, Dafna Michaelson Jenet	Youth Suicide Prevention	Monitor
HB 1182	Don Coram, Lois Court, Joann Ginal, Lois Landgraf	Statewide System for Advance Directives	Oppose
HB 1220	Jovan Melton, Jack Tate	Bitcoin Dealers Licensed as Money Transmitters	Oppose
HB 1224	Robert Gardner, Yeulin Willett	Licensee Discipline Mediation State Agency	Support
HB 1254	James Smallwood, Kevin Van Winkle	Public Trustee Deed of Trust Foreclosure Sales	Amend
HB 1261	Daniel Kagan, Mike Weissman	Colorado Arbitration Fairness Act	Oppose
HB 1262	Dominique Jackson, Daniel Kagan, Dylan Roberts	Arbitration Services Provider Transparency Act	Oppose
HB 1326	Kent Lambert, David Young	Support for Transition from Institutional Settings	Support
HB 1346	John Kefalas, Lois Landgraf, Jonathan Singer, James Smallwood	Abuse of Youth Under 21 in Care of Institution	Support
HB 1348	Robert Gardner, John Kefalas, Lois Landgraf, Jonathan Singer	Child Welfare Information and Services	Support
HB 1378	Janet Buckner, Jessie Danielson, Kerry Donovan, Rhonda Fields	Equal Pay for Equal Work Act	Support

BILL PROGRESS	ACTION DATE	LAST ACTION	BILL URL
Dead/Failed/Vetoed	6/5/2018	Governor Vetoed	billtrack50.com/BillDetail/917712
Signed	3/22/2018	Governor Signed	billtrack50.com/BillDetail/917731
Dead/Failed/Vetoed	2/6/2018	House Committee on Judiciary Postpone Indefinitely	billtrack50.com/BillDetail/917423
Dead/Failed/Vetoed	4/16/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/928504
Dead/Failed/Vetoed	5/7/2018	Senate Committee on Finance Postpone Indefinitely	billtrack50.com/BillDetail/929497
Signed	4/25/2018	Governor Signed	billtrack50.com/BillDetail/929242
Signed	5/29/2018	Governor Signed	billtrack50.com/BillDetail/930925
Passed	5/29/2018	Governor Signed	billtrack50.com/BillDetail/941006
Passed	6/6/2018	Governor Signed	billtrack50.com/BillDetail/943324
Dead/Failed/Vetoed	5/1/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/945190
Dead/Failed/Vetoed	3/29/2018	House Committee on Health, Insurance, and Environment Postpone Indefinitely	billtrack50.com/BillDetail/945437
Dead/Failed/Vetoed	4/30/2018	Senate Committee on Business, Labor, and Technology Postpone Indefinitely	billtrack50.com/BillDetail/946064
Signed	5/29/2018	Governor Signed	billtrack50.com/BillDetail/946057
Signed	4/23/2018	Governor Signed	billtrack50.com/BillDetail/960242
Dead/Failed/Vetoed	4/18/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/961441
Dead/Failed/Vetoed	4/18/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/961295
Signed	4/30/2018	Governor Signed	billtrack50.com/BillDetail/973944
Signed	5/30/2018	Governor Signed	billtrack50.com/BillDetail/975145
Passed	5/30/2018	Governor Signed	billtrack50.com/BillDetail/975157
Dead/Failed/Vetoed	5/4/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/976902

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BILL NUMBER	SPONSOR(S)	NAME	POSITION
HB 1385	Don Coram, Dylan Roberts	Domestic Relations Changes Due to Federal Tax Law	Strong Support
HB 1390	Dominick Moreno, Kim Ransom, Jonathan Singer, James Smallwood	Safe Family Option for Families in Crisis	Amend
HB 1397	Dominique Jackson, Dominick Moreno	Landlord Tenant Warranty of Habitability	Oppose
HB 1405	Robert Gardner, Pete Lee	Providers of Legal Services Reporting Exception	Amend
HB 1415	Stephen Fenberg, Faith Winter	Regulate Student Education Loan Servicers	Support
HB 1426	Jovan Melton, Tim Neville, Daniel Pabon, Jack Tate	Virtual Currency Exemption Money Transmitters Act	Amend
SB 015	Robert Gardner, Owen Hill, Larry Liston, David Williams	Protecting Homeowners and Deployed Military	Amend
SB 056	Cheri Jahn, Pete Lee, Yeulin Willett	Civil Jurisdiction of County Courts and Filing Fees	Amend
SB 060	Don Coram, Millie Hamner	Protective Orders in Criminal Cases	Support
SB 109	Robert Gardner, Alec Garnett, Cole Wist	Authorize Audio-Video Communication Notarial Acts	Oppose
SB 115	Irene Aguilar, Brittany Pettersen	Apply Stark Laws to Medical Referrals Outside Medicaid	Oppose
SB 119	Adrienne Benavidez, Terri Carver, Robert Gardner	False Imprisonment of a Minor	Oppose
SB 120	Dominique Jackson, Kevin Priola, Angela Williams, James Wilson	Time Period for Tenant to Cure Unpaid Rent	Oppose
SB 165	Tim Neville, Lori Saine, Nancy Todd, Faith Winter	Requirements for Public Administrators and Deputies	Support
SB 166	Don Coram, Leslie Herod	Change Maximum Criminal Penalty One Year to 364 Days	Strong Support
SB 180	Robert Gardner, Matthew Gray, Cole Wist	Colorado Trust Code	Strong Support
SB 192	Perry Buck, Vicki Marble	Local Government Liable Fracking Ban Oil and Gas Moratorium	Oppose
SB 197	Larry Crowder, Kimmi Lewis, Jerry Sonnenberg	Agriculture Motor Vehicle Port of Entry	Amend
SB 212	Beth Martinez Humenik	Increase Juror Compensation	Support
SB 240	Robert Gardner, Cole Wist	Revised Uniform Unclaimed Property Act	Monitor
SB 241	Steve Humphrey, Kevin Lundberg	Colorado Children First Act	Oppose

BILL PROGRESS	ACTION DATE	LAST ACTION	BILL URL
Signed	5/24/2018	Governor Signed	billtrack50.com/BillDetail/977572
Dead/Failed/Vetoed	5/7/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/977578
Dead/Failed/Vetoed	5/4/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/978241
Passed	6/6/2018	Governor Signed	billtrack50.com/BillDetail/978942
Dead/Failed/Vetoed	5/3/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/979056
Dead/Failed/Vetoed	5/9/2018	Senate Third Reading Lost - No Amendments	billtrack50.com/BillDetail/979762
Passed	6/6/2018	Governor Signed	billtrack50.com/BillDetail/917714
Passed	5/29/2018	Governor Signed	billtrack50.com/BillDetail/918298
Signed	3/22/2018	Governor Signed	billtrack50.com/BillDetail/918128
Dead/Failed/Vetoed	5/10/2018	House Committee on Appropriations Postpone Indefinitely	billtrack50.com/BillDetail/938119
Dead/Failed/Vetoed	2/14/2018	Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/937886
Passed	5/29/2018	Governor Signed	billtrack50.com/BillDetail/937841
Dead/Failed/Vetoed	2/14/2018	Senate Committee on Business, Labor, and Technology Postpone Indefinitely	billtrack50.com/BillDetail/938042
Signed	4/2/2018	Governor Signed	billtrack50.com/BillDetail/945956
Dead/Failed/Vetoed	5/9/2018	House Considered Senate Adherence—Result was to Adhere	billtrack50.com/BillDetail/945796
Signed	4/26/2018	Governor Signed	billtrack50.com/BillDetail/959547
Dead/Failed/Vetoed	4/18/2018	House Committee on State, Veterans, & Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/965480
Dead/Failed/Vetoed	4/25/2018	House Committee on State, Veterans, & Military Affairs Postpone Indefinitely	billtrack50.com/BillDetail/965636
Dead/Failed/Vetoed	5/7/2018	Senate Committee on Appropriations Postpone Indefinitely	billtrack50.com/BillDetail/971756
Dead/Failed/Vetoed	4/25/2018	Senate Committee on Judiciary Postpone Indefinitely	billtrack50.com/BillDetail/977196
Dead/Failed/Vetoed	5/1/2018	Senate Second Reading Lost—No Amendments	billtrack50.com/BillDetail/977515