

The Colorado Chamber of Commerce Legislative Overview of the 2019 Session

A new political landscape created challenges for businesses but the Colorado Chamber still claimed crucial victories

By

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The 2019 state legislative session brought on new challenges for the Colorado Chamber of Commerce. With both legislative chambers and the governor's office controlled by the Democratic Party for the first time since 2013 and a heavy focus on business-related issues at the capitol, the Colorado Chamber's lobby team had to adapt to navigate this new environment.

In previous legislative sessions, split party control of the House and the Senate compelled the parties to cooperate and compromise on bills in a bipartisan manner. In contrast, the one-party control of state government this legislative session resulted in extreme tension between the minority and majority at times, which led to long days and nights at the Capitol, hearings that lasted through the early hours of the morning, working over the weekend for the first time in nearly two decades, and even a lawsuit over the practice of reading bills at length.

Driving this tension was an ambitious legislative agenda, from oil and gas regulation to gun control to vaccinations to many employment-related bills. With the legislative session lasting only 120 days, these broad objectives needed to pass within a set window of time. The Republican minority grew frustrated with the pace of the legislative process, citing rushed committee hearings on controversial bills, a lack of stakeholder engagement on some bills, and late-filed legislation. They responded by using procedural mechanisms to try and slow the pace of session, including most notably requesting that bills be read at length.

Along with the new dynamic of one-party control, Colorado also had a new Governor this session, Gov. Jared Polis, who served as somewhat of a wildcard for both parties. Gov. Polis came from Washington, DC and had never worked directly with many of the current state legislators. In his first session, the governor stood by his major priorities – including environmental legislation, cost controls for health care, and funding for full-day pre-K. He did, however, surprise members of his own party on occasion, including when he publicly expressed concerns with the financial solvency of SB 188, the paid family and medical leave bill – the Colorado Chamber's top focus this session. Gov. Polis' stance on the bill in the final weeks of session was one of many factors that ultimately changed the tide to the business community's favor.

Despite this challenging political environment, the Colorado Chamber worked with both sides of the aisle and achieved results on behalf of its members and the broader business community. The Chamber's lobby team worked on hundreds of bills this session and aggressively advocated for Colorado businesses large and small.

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Top Legislative Accomplishment for the 2019 Session

The Colorado Chamber's greatest accomplishments this session can be seen in the bills it worked to amend or kill which, without these efforts, would have cumulatively cost Colorado employers billions in the coming years. Of the 23 bills the Colorado Chamber originally opposed, 8 died and 4 were amended to the business community's satisfaction, prompting an official change in position to "neutral" – including the most important bill this legislative session for the Colorado Chamber, Senate Bill 188.

The Family and Medical Leave Insurance (FAMLI) Act (Senate Bill 188)

The Colorado Chamber's biggest priority this session was the FAMLI bill, and making sure legislators heard the concerns of businesses across the state about how such a massive new government program would affect their operations. This bill had been attempted four times in past sessions, but each effort previously failed – and often on a bipartisan vote.

The Chamber's lobby team and other stakeholders worked with the bill sponsors beginning last summer to try and reach an outcome that worked for both employers and employees. Unfortunately, the original bill as filed was not something the Colorado Chamber could support.

To be clear, the business community's opposition to SB 188 was never about the concept of family leave. Employers in Colorado have long supported workers who may want to take leave from work for medical and family reasons. Rather, the opposition was about striking a balance between businesses and workers, ensuring any new government program is financially sound, and allowing for flexibility in the program to meet the individual needs of employees and businesses.

But even after an initial round of amendments to the bill in the Senate Finance Committee, SB 188 was still not in a form that would work for Colorado employers and employees. It created a \$1 billion per year, one-size-fits-all program that was far too broad and didn't align with federal law. It also would have had unintended consequences, hurting the employees it was intending to help.

The Colorado Chamber led a coalition of more than 75 public and private entities opposed to the bill, representing a wide range of industries, thousands of businesses, all 272 cities and towns, and over one million workers statewide. Lawmakers were flooded with calls and emails from members of this coalition, and ultimately, the bill was entirely replaced in the final weeks of session to reflect the range of concerns raised about the bill.

In what was dubbed in the press as a major victory for the business community this legislative session, the amended FAMLI bill now takes a more cautious and thoughtful approach to the issue of family leave in Colorado. It starts with an actuarial study to be performed over the next year, and it requires legislative action next session to move forward with any program. Key provisions are as follows:

- It creates a task force to be appointed by the Governor and General Assembly;
- The task force will study options for a third party to run a family leave program;
- It requires a study of the costs and financial impact of a family and medical leave program;
- It requires recommendations be presented to members of the General Assembly and the Governor.

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- The General Assembly will have to introduce a new bill next session to implement the program based on the results of the study.

Members of the task force will have the opportunity to identify all affordable, financially responsible options for state family leave programs moving forward. It will be important for the Colorado Chamber and stakeholders to remain engaged on this issue through the next legislative session, where it will inevitably be introduced again.

Labor and Employment Legislation

In addition to the monumental family and medical leave legislation, Democrats in the General Assembly placed a heavy focus on other bills impacting how Colorado businesses employ workers.

One major bill on the Democrat's agenda was *SB 85*, the Equal Pay for Equal Work Act. The Colorado Chamber supports equal pay for all workers but opposed the legislation as introduced, primarily due to the creation of a new private right of action against an employer and other provisions in the bill that would have encouraged a litigious relationship between employees and employers, resulting in costly lawsuits between both parties. After testimony from the business community, members of the majority party and leadership recognized these concerns and helped secure several amendments to the bill. The Colorado Chamber changed its position from "opposed" to "neutral" in what it considers a legislative accomplishment on this bill.

Another employment bill the Colorado Chamber worked on early this session was *HB 1025*, the "ban the box" bill, which puts protections in place for job applicants with criminal histories. The Colorado Chamber and other business groups opposed similar bills in past legislative sessions based on concerns that they created costly litigation for both employers and applicants. But, after working with the proponents before the bill was filed this time around, the business community secured some key changes from previous years. Importantly, the bill specifically does not create a new private right of action – it instead creates a state administrative process to handle complaints. Due to this modification and other differences from past versions of this legislation, the Colorado Chamber voted to take a "neutral" position after the bill was introduced.

The local government minimum wage bill, *HB 1210*, was also a significant employment-related bill that passed in the final hours of legislative session. The bill allows local governments to set their own minimum wage, essentially establishing the state's minimum wage of \$12/hour (beginning in 2020) as the floor.

While *HB 1210* was slightly improved throughout session to limit how many jurisdictions can raise the minimum wage above the state level, and how high it can be set to (no more than a 15% increase in any given year), the bill still creates a patchwork of wage rates across the state and will ultimately increase prices for consumers. For that reason, the Colorado Chamber remained opposed to the bill in its final form.

Energy and Environment Legislation

Majority Democrats were very vocal about their environmental agenda this legislative session. Due to this sense of urgency, they successfully passed nearly every major bill they filed related to

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energy, climate change, oil and gas and emissions – despite opposition and protests from industry and business groups.

By far one of the most controversial bills of this session was *Senate Bill 181*, which changes how the state regulates oil and gas and gives local governments more control in the process. Members of Democrat leadership in the House and Senate, and Governor Polis made it clear from the beginning of the Session that this effort would be one of their top priorities. While 33 amendments were adopted to the bill throughout the process, including several sought by the oil and gas industry, several in the industry remained opposed to the bill.

The oil and gas industry contributes \$13.5 billion to the Colorado economy, \$1 billion in taxes to fund state and local governments, and employs tens of thousands of workers. The Colorado Chamber opposed the bill and testified against it in committee hearings throughout session to emphasize that SB 181 could have a detrimental impact on the state's overall economy, putting thousands of jobs at risk and resulting in billions in lost revenue.

While the bill makes big changes to oil and gas regulation in the state, including restructuring the Colorado Oil and Gas Conservation Commission, changing its mission, and giving more regulatory power to local governments, much of its impact will be determined through future state and local rulemaking.

Health Care Legislation

Unlike in previous legislative sessions, health care bills this year were often eclipsed by other more controversial topics. Regardless, some sweeping changes are coming for almost every player in the health care industry.

Cost control in health care was a major priority for the Polis administration, and the range of bills that were filed impacted almost every segment of the health care industry to achieve that goal. From controlling the cost of insulin and other drugs to expanding insurance options in rural areas to creating a reinsurance program, the broad range of bills that passed this session will affect employers, physicians, hospitals and consumers alike.

In terms of the bills the Colorado Chamber took a position on, the results were a mixed bag. Several bills died that the Chamber opposed because of their potential to increase the cost of doing business for many in the health care industry. Other bills passed that the Colorado Chamber supported – including *SB 15*, which recreates the former Health Care Task Force to study issues that impact Colorado residents throughout the state, and *SB 79*, which requires certain health care professionals to only prescribe schedule II, III, or IV controlled substances via an electronically transmitted prescription.

In addition, several bills the Colorado Chamber opposed failed to pass this session. One such bill was *HB 1154*, which would have interfered with the contractual relationship between health insurers and pharmacies, increasing the cost of health care for employers and employees. The Colorado Chamber testified in the House Health and Insurance Committee and the bill ultimately died in that committee.

Tax Policy Legislation

Toward the end of legislative session, a complicated and costly corporate income tax bill was filed which was poised to change longstanding tax laws that have been in place since 1985.

The stated intent of *SB 233* was to clarify existing tax statutes surrounding combined reporting – but members of the Colorado Chamber had serious concerns about the bill’s language, as well as the fact that the Colorado Supreme Court heard oral arguments on the subject in the middle of this legislative Session. Amending these statutes amidst pending litigation could have unanticipated impacts on businesses. The legislation would have also likely resulted in a net revenue gain, which requires voter approval under state law.

After testimony by tax experts and members of the Colorado Chamber, the bill was delayed in Committee and eventually amended on the floor to resolve the most pressing aspects of the bill. The Chamber switched its position from “opposed” to “neutral” before the amended bill finally passed, marking another victory that potentially saved businesses hundreds of millions of dollars.

Other Key Legislation for Business this Session

Funding for Transportation and Education (House Bills 1257 and 1258)

The mission of the Colorado Chamber is to champion a healthy business climate, and in order to maintain Colorado as a top state for business, it’s crucial that we invest in critical transportation infrastructure to keep up with growth.

Lawmakers have struggled in recent years to address Colorado’s growing transportation challenges. If these funding deficiencies continue, it could broadly impact the state economy and the ability of companies to do business here.

That’s why the Colorado Chamber Board of Directors voted in March 2019 to support the bipartisan HB 1257 and 1258. The bills allow voters to decide whether the state can keep excess revenues under the Taxpayer Bill of Rights (TABOR), and would allocate one-third each to transportation, higher education and public schools. Both of these bills passed, and pending the Governor’s signature, the issue will be on the ballot in November.

Results by the Numbers:

In addition to the hundreds of bills the Colorado Chamber lobby team worked on this session, the Chamber officially took positions on 33 bills:

- 7 Chamber-supported and passed
- 2 Chamber-supported and died
- 11 Chamber-opposed and passed
- 8 Chamber-opposed and died
- 5 Chamber-neutral and passed (4 were formerly Chamber-opposed)

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Colorado Chamber Policy Council Bills and Positions

Energy & Environment Council Bills

[HB 1113](#) by Reps. Roberts & Sen. Donovan

[HB 1188](#) by Reps. Sirota & Sen. Foote

[HB 1261](#) by Reps. Becker/Jackson & Sens. Winter/Williams

[HB 1314](#) by Reps. Becker/Galindo & Sens. Winter/Donovan

[SB 181](#) by Sen. Fenberg & Rep. Becker

Bill Title/Description

Protect Water Quality Adverse Mining Impacts

Greenhouse Gas Pollution Impact in Fiscal Note

Climate Action Plan to Reduce Pollution

Transition from Coal-based Electrical Energy Economy

Protect Public Welfare Oil & Gas

Council Position

Amended/**Signed by Gov.**

Oppose/**Passed**

Oppose/**Passed**

Oppose/**Passed**

Oppose/**Signed by Gov.**

Health Care Council Bills

[HB 1131](#) Rep. Jaquez Lewis & Sen. Winter

[HB 1154](#) by Reps. Catlin/Mullica & Sens. Danielson/Coram

[HB 1296](#) by Reps. Jackson/Jaquez Lewis & Sens. Ginal/Donovan

[SB 005](#) by Sen. Rodriguez & Rep. Jaquez Lewis

[SB 015](#) by Sen. Ginal & Rep. Beckman

[SB 79](#) by Sens. Todd/Priola & Reps. Esgar/Landgraf

[SB 134](#) by Sens. Fields/Tate & Rep. Soper

Bill Title/Description

Prescription Drug Cost Education

Any Willing Pharmacy

Prescription Drug Cost Reduction Measures

Import Prescription Drugs from Canada

Create Statewide Health Care Review Cmte

Electronic Prescribing Controlled Substances

Out-of-network Health Care Disclosures & Charges

Council Position

Oppose/**Signed by Gov.**

Oppose/**Dead**

Oppose/**Dead**

Oppose/**Sent to Gov.**

Support/**Sent to Gov.**

Support/**Signed by Gov.**

Oppose/**Dead**

Labor & Employment Council Bills

[HB 1025](#) by Reps. Herod/Melton & Sen. Foote

[HB 1058](#) by Rep. Landgraf & Sen. Priola

[HB 1096](#) by Rep. Melton

[HB 1210](#) by Reps. Melton/Galindo & Sens. Danielson/Moreno

[HB 1289](#) by Rep. Weissman & Sen. Foote

[SB 85](#) by Sen. Danielson/Rep. Buckner

[SB 173](#) by Sen. Donovan & Rep. Kraft-Tharp

[SB 188](#) by Sens. Winter/Williams & Reps. Gray/Duran

Bill Title/Description

Limits on Job Applicant Criminal History

Income Tax Benefits for Family Leave

Colorado Right to Rest

Local Government Minimum Wage

Consumer Protection Act

Equal Pay for Equal Work

CO Secure Savings Plan Board

Family Medical Leave Insurance Program (FAMLI)

Council Position

Neutral/**Sent to Gov**

Support/**Dead**

Oppose/**Dead**

Oppose/**Sent to Gov.**

Neutral as Amended/**Passed**

Neutral as Amended/**Signed by Gov**

Neutral/**Signed by Gov**

Neutral as Amended/**Passed**

Tax Council Bills

[HB 1240](#) by Reps. Kraft-Tharp/Van Winkle & Sens. Court/Tate

[SB 006](#) by Sen. Williams & Rep. Kraft-Tharp

[SB 131](#) by Sen. Woodward & Reps. Van Winkle/Arndt

[SB 233](#) by Sen. Lee & Rep. Snyder

Bill Title/Description

Sales & Use Tax Administration

Electronic Sales & Use Tax Simplification System

Exempt Certain Businesses from Destination Sourcing Rule

Holding Company Income Tax Combined Report

Council Position

Support/**Signed by Gov.**

Support/**Signed by Gov.**

Support/**Dead**

Neutral as Amended/**Passed**

Governmental Affairs Council Bills

[HB 1033](#) by Rep. Tipper & Sen. Fields

[HB 1034](#) by Reps. Sullivan & Esgar

[HB 1245](#) by Rep. Weissman & Sens. Gonzales/Foote

[SB 217](#) by Sen. Foote & Rep. Snyder

[SB 225](#) by Sen. Gonzales & Rep. Lontine

[SB 234](#) by Sens. Rodriguez/Foote & Rep. Weissman

[SB 237](#) by Sen. Rodriguez & Rep. Roberts

[SB 243](#) by Sens. Moreno/Foote & Reps. Cutter/Singer

Bill Title/Description

Local Gov'ts Regulation of Nicotine Products

Minimum Two-person Crew on Freight Trains

Affordable Housing Funding From Vendor Fee Changes

Creation of a Healthcare Provider Lien

Rent Control

Sunset Professional Review Committees

Consumer Protection Act Damages

Prohibit Food Establishments' Use of Polystyrene

Council Position

Oppose/**Signed by Gov.**

Oppose/**Signed by Gov.**

Oppose/**Signed by Gov.**

Oppose/**Dead**

Oppose/**Dead**

Support/**Signed by Gov.**

Oppose/**Dead**

Oppose/**Dead**

Board of Directors

[HB 1257](#) by Reps. Becker/McCluskie & Sens. Court/Priola

[HB 1258](#) by Reps. Becker/McCluskie & Sens. Court/Priola

Bill Title/Description

Voter Approval To Retain Revenue For Education & Transp.

Allocate Voter-Approved Revenue For Education & Transp.

Board Position

Support/**Passed**

Support/**Sent to Gov.**

Energy & Environment Council

HB 19-1113 - Protect Water Quality Adverse Mining Impacts (Sponsors: Rep. Roberts & Senator Donovan)

Position: **Oppose then changed to Amend**

Bill Status: Signed by Governor on 4/4/19

- As introduced, required most reclamation plans to demonstrate, by substantial evidence, an end date for any water quality treatment necessary to ensure compliance with applicable water quality standards; however, the bill was amended to require a reasonably foreseeable end date of such water treatment;
- Eliminates the self-bonding option associated with reclamation liabilities and requires that all reclamation bonds include financial assurances in an amount sufficient to protect water quality, including costs for any necessary treatment and monitoring costs.

HB 19-1188 - Greenhouse Gas Pollution Impact (Sponsors: Rep. Sirota & Senator Foote)

Position: **Oppose**

Bill Status: Passed in House & Senate

- Beginning the 2020 legislative session, authorizes the Speaker of the House, the House Minority Leader, the President of the Senate and the Senate Minority Leader to each request, on up to 5 bills, an assessment of whether the measure is likely to directly cause a net increase or decrease in greenhouse gas pollution within the 10-year period following enactment of the legislation to bill included in the bill's fiscal note. The fiscal note is not required to estimate the magnitude of the impact;
- Requires DNR, the Colorado Energy Office, and other state agencies with relevant subject matter expertise to provide information to the legislative council staff on a legislative measure's impact on greenhouse gas pollution in connection with the preparation of a fiscal note.

HB 19-1261 - Climate Action Plan to Reduce Pollution (Sponsors: Reps. Becker & Jackson / Senators Winter & Williams)

Position: **Oppose**

Bill Status: Passed in House & Senate

- Establishes the following statewide greenhouse gas emission reduction goals based on 2005 levels:
 - At least 26% by 2025;
 - At least 50% by 2030; and
 - At least 90% by 2050.
- Specifies that the Air Quality Control Commission take into account policies and the promulgation of rules to reduce greenhouse gas pollution and requires the Commission to consult with the PUC on rules that affect those who provide retail electricity in Colorado.

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- The lobbying team worked with the sponsors and proponents on amendments based on concerns with the discretion given to the Commission on potential rulemaking. The amendments did not resolve all of the concerns by Council members and the CO Chamber remained opposed to the bill. Colorado Chamber lobbyists testified against the bill.

HB 19-1314 - Just Transition from Coal-Based Electrical Energy Economy (Sponsors: Rep. Becker & Galindo / Senators Winter & Donovan)

Position: **Oppose**

Bill Status: Passed in House & Senate

- Creates the Just Transition Office in the Department of Labor & Employment and a 19-member Just Transition Advisory Committee to advise the Director on implementation of benefits, grants, and transition plans;
- Requires the Director in consultation with the Advisory Committee to submit a final Just Transition Plan for Colorado to the Governor and the General Assembly by December 31, 2020 which may include the following:
 - Benefits to coal transition workers to support themselves and their families and to complete education and training; and
 - Grants to eligible entities in coal transition communities.
- The bill also requires an electric utility that plans to retire a coal-fueled electric generating facility to submit a workforce transition plan to the Division and the affected community at least six months prior to retirement of the facility unless the utility has submitted a workforce plan in an electric resource plan filed with the Public Utilities Commission.

SB 19-181- Protect Public Welfare Oil & Gas (Sponsors: Senator Fenberg & Rep. Becker)

Position: **Oppose**

Bill Status: Signed by Governor on 4/16/19

- The bill allows cities and counties to have more control over where oil and gas companies can drill and could choose to impose local setback rules for new wells and impose operators with additional fees and fines;
- The Colorado Oil and Gas Conservation Commission (COGCC) is the state board that approves drilling permits and other regulations on the industry. The bill made changes to the make-up of the Commission by reducing the number of oil & gas industry members that serve on the COGCC to one from three. It also requires one member with training in wildlife protection, one with environmental protection and one with soil conservation experience.
- SB 181 was one of the most controversial bills introduced and passed during the 2019 Session. 33 amendments were adopted to the bill during the legislative process, including several sought by the oil & gas industry but many in the industry remained opposed to the bill. Colorado Chamber lobbyists testified against the bill.

HealthCare Council

HB 19-1131 - Prescription Drug Cost Education (Sponsors: Representative Jaquez Lewis & Senator Winter)

Position: **Oppose**

Bill Status: Signed by Governor on 5/16/19

- Requires a drug manufacturer or its agent to provide, in writing, the wholesale acquisition cost of a prescription drug when sharing information about the drug in the course of prescription drug marketing;
- The bill was amended to also require notice of the existence of at least three generic prescription drugs from the same therapeutic class;
- The Council opposed the bill based on concerns that providing the wholesale acquisition cost without additional information related to the true cost of the drug to the patient or other payer may impact prescribing behavior in a way that does not benefit the patient or other payer.

HB 19-1154 - Any Willing Pharmacy (Sponsors: Reps. Catlin & Mullica / Senators Danielson & Coram)

Position: **Oppose**

Bill Status: Died on 2/13/19 in House Committee on Health & Insurance

- The bill prohibits a carrier that offers or issues a health benefit plan that covers pharmaceutical services, including prescription drug coverage, or a pharmacy benefit management firm managing those benefits for a carrier, from:
 - Limiting or restricting a covered person's ability to select a pharmacy of the covered person's choice if certain conditions are met;
 - Imposing a copayment, fee, or other cost-sharing requirement for selecting a provider of the covered person's choosing;
 - Imposing other conditions on a covered person or provider that limit or restrict a covered person's ability to use a pharmacy of the covered person's choosing; or
 - Denying the provider the right to participate in any of its network contracts in this state or as a contracting provider in this state, so long as provider agrees to specified conditions.
- The Colorado Chamber lobbying team testified in opposition to the bill and the Chamber has opposed similar legislation which has failed during the last four legislative sessions. Opposition is based on concerns that limiting co-payments on a patient for the services described above ultimately triggers an increase in costs to businesses who seek to provide affordable health care coverage for their workers.

HB 19-1296 – Prescription Drug Cost Reduction Measures (Sponsors: Representatives Jackson & Jaquez Lewis; Senators Ginal & Donovan)

Position: **Oppose**

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Bill Status: Died in House Committee on Appropriations

- HB 1296 required health insurers, drug manufacturers, pharmacy benefit management firms, and certain nonprofit organizations to report information related to prescription drug costs to the Commissioner of Insurance. The Commissioner would have been required to analyze the information and develop a report concerning the impacts of prescription drug costs on health insurance premiums. The bill also required carriers to apply rebates on prescription drugs to reduce a patient's cost at the point-of-sale of the prescription drug;
- The Council opposed the bill based on insufficient protections from disclosure of the information that health insurers, drug manufacturers and pharmacy benefit managers would have been required to submit to the Commissioner. Colorado Chamber lobbyists testified against the bill.

SB 19-005 - Import Prescription Drugs from Canada (Sponsors: Senator Rodriguez & Representative Jaquez Lewis)

Position: **Oppose**

Bill Status: Sent to Governor on 5/7/19

- Creates the "Dr. Irene Aguilar Canadian Prescription Drug Importation Act" under which the Department of Health Care Policy and Financing (HCPF) will design a program to import prescription drugs from Canada for sale to Colorado consumers;
- By September 1, 2020, HCPF must submit a request for federal approval of the program based on the bill's criteria. If the program is approved, HCPF is required to begin operating the program no later than six months after receiving federal approval.
- The Council opposed the bill based on public safety risks and whether importation of drugs actually results in cost savings for consumers. Colorado Chamber lobbyists testified against the bill.

SB 19-015 - Create Statewide Health Care Review Committee (Sponsors: Senator Ginal & Representative Beckman)

Position: **Support**

Bill Status: Sent to Governor on 5/16/19

- Recreates the former Health Care Task Force, into the Statewide Health Care Review Committee with the goal of studying health care issues that affect Colorado residents. The committee is comprised of no more than 10 members of House Health & Insurance Committee, House Public Health Care & Human Services Committee and the Senate Health & Human Services Committee. The committee is permitted to meet up to 2 times during the interim between legislative sessions, including 2 field trips.


SB 19-079 - Electronic Prescribing Controlled Substances (Senators Todd & Priola / Reps. Esgar & Landgraf)

Position: **Support**

Bill Status: Signed by Governor on 4/8/19

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- Requires podiatrists, physicians, physician assistants, advanced practice nurses, and optometrists, starting July 1, 2021, and dentists and practitioners serving rural communities or in a solo practice, starting July 1, 2023, to prescribe schedule II, III, or IV controlled substances only through a prescription that is electronically transmitted to a pharmacy unless a specified exception applies;
 - Prescribers are required to indicate on license renewal questionnaires whether they have complied with the electronic prescribing requirement.

SB 19-134 - Out-of-Network Health Care Disclosures (Sponsors: Senators Fields & Tate / Representative Soper)

Position: **Oppose**

Bill Status: Died on 4/25/19 in House Committee on Health & Human Services

- Sets the reimbursement rate that a health insurance carrier must pay a health care facility if a covered person is treated for emergency services;
- Requires in-network health care facilities and health care providers to make disclosures to patients covered by a health benefit plan concerning the provision of services by an out-of-network provider; and
- Outlines the claims and payment process, including reimbursement rates for the provision of out-of-network services for health care facilities and health care providers.
- Although the Council was not unified in supporting a similar bill concerning out-of-network health care services (HB 19-1174), the Council did agree that SB 134 was not the proper vehicle to address the issue out-of-network health care services and therefore voted to oppose it.

Labor & Employment Council

HB 19-1025 - Limits on Job Applicants Criminal History Requirements (Sponsors: Reps. Herod & Melton / Senators Foote & Rodriguez)

Position: **Neutral**

Bill Status: Sent to Governor on 4/29/19

- HB 1025 bill prohibits an employer from stating in a job posting or on any form of application that a person with a criminal history may not apply for the job. It also prohibits an employer from asking about or requiring disclosure of an applicant's criminal history on an initial application;
- The bill does allow an employer to continue to secure a criminal background report during any stage of the hiring process. The bill also does not create a private cause of action and any complaints of an alleged violation must be filed w/CDLE which will investigate the complaints;
- Prior versions of this bill introduced in previous Sessions included a private right of action allowing an applicant to bring a lawsuit against an employer for a violation of the statute.

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Sponsors introduced the bill without this provision. The Council took a “neutral” position based on the sponsors’ willingness to compromise on this language.

HB 19-1058 - Income Tax Benefits for Family Leave (Sponsors: Reps. Landgraf & Beckman / Senator Priola)

Position: Support

Bill Status: Died on 1/31/19 in House Committee on Finance

- HB 1058 would have created an income tax credit and an income tax deduction for family leave based on:
 - the birth or adoption of an employee's child, or placement of a foster child in the employee's care;
 - care for an employee's spouse, child, or parent with a serious health condition;
 - a serious health condition causing an employee to not perform their work; or
 - a qualified exigency determined by the U.S. Secretary of Labor attributable to the employee's spouse, child, or parent's active duty in the U.S. Armed Forces.
- The tax credit could be claimed for up to 12 weeks of leave and was equal to:
 - 50% of the amount paid by employers with fewer than 50 employees; or
 - 25% of the amount paid by employers with 50 employees or more.
- CO Chamber lobbyists testified in support of the bill.

HB 19-1096 - Colorado Right to Rest (Sponsors: Representative Melton)

Position: Oppose

Bill Status: Died on 2/26/19 in House Committee on Transportation & Local Government

- HB 1096 would have created the Colorado Right to Rest Act and prohibited the State and local jurisdictions from enacting laws that limit, prohibit or penalize homeless individuals the right to use and move freely in public spaces; the right to rest in public spaces; the right to eat, share or give food in public spaces where food is not prohibited, or the right to occupy a person's motor vehicle. This legislation has been attempted and failed in prior legislative sessions;
- The Council took an “oppose” position on the bill and was joined by the Colorado Municipal League and other interest groups. The bill died in the House Committee on Transportation & Local Government.

HB 19-1210 - Local Government Minimum Wage (Sponsors: Reps. Melton & Galindo / Senators Danielson & Moreno)

Position: Oppose

Bill Status: Sent to Governor on 5/17/2019

- Prior to the passage of HB 1210, local governments were prohibited from enacting minimum wage laws separate from those of the State. HB 1210 repeals that provision and allows local governments to establish minimum wages through their governing body, an initiative, or referendum;
- Council members expressed concern with the bill based on the potential of a patchwork system of minimum wage rates across the State and increased costs to consumers similar to other

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states that have enacted laws such as this one;

- Several amendments were adopted to try to resolve some of the concerns with the bill including addressing the dilemma of employees who work in multiple jurisdictions and aligning the bill with the current tip system.

HB 19-1289 - Consumer Protection Act (Sponsors: Representative Weissman / Senators Foote & Gonzales)

Position: Neutral as Amended

Bill Status: Passed in House & Senate

- HB 1289 creates additional protections in the Colorado consumer code and enforcement of the "Colorado Consumer Protection Act" for reckless acts;
- The bill adds "recklessly" as a culpable mental state for certain violations of the "Colorado Consumer Protection Act." The bill also increases the penalty for a violation of the Act from \$2,000 to \$20,000 per violation and from \$10,000 to \$50,000 per violation committed against an elderly person;
- The Attorney General's Office reached out to the CO Chamber prior to introduction of the bill to discuss the goals of the legislation and to find areas of agreement. Several amendments were adopted to the bill after it was introduced to address Chamber members' concerns including language addressing standard form contracts. Ultimately, our position moved from an "oppose" to a "neutral" position based on those changes.

SB 19-085 - Equal Pay for Equal Work (Sponsors: Senators Danielson & Pettersen / Reps. Buckner & Gonzales Gutierrez)

Position: Neutral as Amended

Bill Status: Signed by Governor on 5/22/19

- SB 85 *as introduced* removed the current state administrative process for filing wage discrimination complaints against employers & allowed workers to directly sue an employer in state court. This legislation had been introduced in prior legislative sessions and SB 85 included many of the same concerns expressed by the CO Chamber in the past;
- The CO Chamber lobbying team pulled together a coalition of its members and partners in the business community to address concerns with the bill as introduced. That coalition worked together and developed proposed changes which were shared with the proponents and sponsors;
- Members of the Senate Judiciary Committee and Senate leadership responded to the concerns of the coalition and encouraged the adoption of several amendments which were ultimately achieved and included:
 - Changing the requirement for employers to maintain records for back pay from six years to three years;
 - Striking language to address concerns about the need to re-post a job if an applicant negotiates outside of the posted pay range;

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- Establishing that if an employer has operated in good faith, a court should not have the discretion to award liquidated damages;
 - Expanding the factors considered for pay differentials to include geographic location, education, training, experience, and travel;
 - Expanding the definition of “substantially similar work”;
 - Clarifying that workers have the option of seeking a wage disparity claim through the Colorado Civil Rights Division;
 - Delaying implementation of the law from January 1, 2020 to January 1, 2021 to allow more time for compliance.
- Additional amendments were adopted when the bill passed out of the Senate and over to the House and included but were not limited to:
- Establishing a process by the Department of Labor & Employment to accept and mediate complaints and provide legal resources regarding alleged violations;
 - Allowing into evidence that an employer had conducted a pay audit of its workforce to identify any pay disparities if conducted within 2 years prior to the date of a civil action.
- CO Chamber lobbyists testified on the bill and shared concerns with the introduced bill as well as provided comments on the amendments being offered in the committee hearing.

SB 19-173 - Colorado Secure Savings Plan (Sponsors: Senators Donovan & Pettersen / Representatives Kraft-Tharp & Hansen)

Position: **Neutral**

Bill Status: Signed by Governor on 5/20/19

- Creates the Colorado Secure Savings Board in the Office of the State Treasurer to study the feasibility of creating a retirement savings plan for private sector employees;
- Allows for a detailed financial analysis to be examined by a Board that includes the State Treasurer & eight (8) members appointed by the Governor.

SB 19-188 - Family Medical Leave Ins. Program (FAMLI) (Sponsors: Senators Winter & Williams / Reps. Gray & Duran)

Position: **Neutral as Amended**

Bill Status: Passed in House & Senate

- SB 188 was one of the most controversial bills introduced this Session and impacted every employer and employee in CO. Similar legislation has been attempted in prior legislative Sessions but failed. The bill created a state mandated family & medical leave program within the CO Department of Labor & Employment and required approximately 200 new full-time employees to run the program. The leave could be used for an individual’s serious health condition; pregnancy; bonding w/a child; caring for a foster child; domestic abuse or sexual assault;
- The CO Chamber staff began coalition building in July 2018 in advance of the legislative Session and developed a list of priorities that would enable the CO Chamber and 75 other public and private business interests across the State to agree on a paid family & medical leave program that would work for both employers and employees. Those priorities included aligning state

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legislation with the federal Family & Medical Leave Act as it relates to eligibility, benefits, applicability; avoiding stacking of leave; allowing for current benefits; and ensuring that the program is financially solvent; exempting small employers and exempting employers with same or better benefits;

- The coalition met with the sponsors over the summer and fall of 2018 and shared those priorities. Beginning in January 2019, a team of labor & employment attorneys on behalf of the CO Chamber, and attorneys that represented the advocates of the bill met for four weeks to try to reach an agreement on the legislation. Unfortunately, a consensus on the bill language was not reached;
- The sponsors introduced the bill in February 2019 which included provisions that remained concerning to the business coalition and included:
 - Non-alignment with the Federal Family & Medical Leave Act (FMLA) and creating a potential for “stacking” of leave under the State FAMLI program and the federal Family & Medical Leave Act;
 - Allowing for up to 12-16 weeks of leave for all employees including if that employee was working for multiple employers which exceeded the amount of leave under the federal Act;
 - A requirement that all employers – of any size - provide the leave and hold the position during the duration of the leave. No exemption was allowed for small businesses similar to the federal Family & Medical Leave Act;
 - Payment of the leave benefits required a 50%/50% split between a worker and their employer. This was a deviation from other states as well as prior versions of the bill which required the employee to pay 100% of the benefits;
 - Leave could be taken for a “family member” however the definition of family member was expanded from the Federal Family & Medical Leave Act;
 - Eligibility for taking the benefits began after a worker had 680 hours on the job. This is a shorter period of time than the 1250 hours required under the current federal Family & Medical Leave Act;
 - Employers that already offered comparable benefits were still required to provide the leave and pay for the State’s program under the introduced bill;
- Members of the Senate Finance Committee expressed strong concerns with the bill and the sponsors prepared several amendments to try to resolve their concerns and those of the business coalition. Unfortunately, several of those amendments did not resolve significant concerns of the business coalition including:
 - Amendment language allowing employers to opt-out of the program simply required employers to offer the same plan as the State FAMLI program;
 - Amendment language created disparities among employers and employees allowing some employers and employees a choice to participate in the program while others did not have a choice;
 - Amendment language did not address concerns with the shorter eligibility period which did not align with federal law;
 - No exemption of any kind for small employers or any modification to the mandate of holding the position for the duration of the leave;
 - Concerns remained with the financial solvency of program and assumptions used in the legislative staff’s fiscal analyses and potential utilization rates which deviated from

other states' utilization rates;

- During this process, a significant number of public and private entities across the State were calling and emailing legislators with their concerns. Finally, after 4 months into the Session, the bill failed to receive enough support from legislators on both sides of the aisle in the Senate and ultimately the sponsors amended the bill in a significant way so that it would pass through the Senate chamber;
- The amended version was limited to a Task Force that will review actuarial analyses and third-party studies on the feasibility of a State program and make recommendations to the Governor and Legislature by January 1, 2020 on whether a state family & medical program should be adopted by the General Assembly.
- CO Chamber lobbyists testified on the bill in the Senate Finance Committee regarding its concerns with the legislation. The CO Chamber is also securing a list of potential employers to serve on the Task Force.

Tax Council

HB 19-1240 – Sales & Use Tax Administration (Sponsors: Reps. Kraft-Tharp & Van Winkle / Senators Court & Tate)

Position: Support

Bill Status: Signed by Governor on 5/23/19

- HB 1240 codifies the Department of Revenue's rule regarding the requirement that out-of-state retailers collect and remit sales tax and establishes destination-based sourcing rules. The bill also requires marketplace facilitators to collect and remit sales tax on behalf of third-party vendors beginning Oct. 1, 2019;
- The bill establishes economic nexus for retail sales for those retailers without physical presence. This nexus applies to out-of-state retailers who have exceeded more than \$100,000 in sales made into the state during the prior calendar year.

SB 19-006 - Electronic Sales & Use Tax Simplification System (Sponsors: Senator Williams & Representative Kraft-Tharp)

Position: Support

Bill Status: Signed by Governor on 4/12/19

- SB 006 allows the Department of Revenue (DOR) to conduct a sourcing method based on the State's current procurement code to develop a sales & use tax simplification system. Once the system is online, DOR will accept any state sales & use tax returns & payments;
- The bill requires at least 3 home rule jurisdictions to voluntarily use the system and after 3 years of the effective date, it is anticipated that all home rule jurisdictions would use the system, but the bill does not require them to do so

SB 19-131 - Exempt Certain Businesses from Destination Sourcing Rule (Sponsors: Senator Woodward & Reps. Van Winkle & Arndt)

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Position: Support

Bill Status: Died on 2/19/19 in Senate Committee on Finance

- SB 131 specified that the destination sourcing rule adopted by the Department of Revenue did not apply to any retailer with physical presence that has generated less than \$100,000 in gross revenue from the sale of tangible personal property or services outside of the jurisdiction where the retailer is located. For retailers with physical presence, the sale would be sourced to the retailer's location, regardless of whether the tangible personal property or service is delivered outside of the taxing jurisdiction in which the retailer is located;
- The bill also added the same exception to the statutory retailer's use tax collection requirement;
- The bill died in the first committee of reference based on anticipation of other legislation to be introduced during the Session addressing this same issue.

SB 19-233 - Changes to Income Tax Combined Reporting (Sponsors: Senator Lee & Representative Snyder)

Position: Neutral as Amended

Bill Status: Passed in House & Senate

- SB19-233 was initiated by the Department of Revenue and introduced late in the Session. It makes changes to income tax statutes regarding combined reporting that have been in place since 1985 and included language in the declaration statement to "clarify" the intent of that same law adopted nearly 30 years ago;
- History: In 1984, the General Assembly established an Interim Committee to evaluate Colorado's corporate income tax laws. The legislation that emerged from months of work by the Interim Committee ultimately became House Bill 1010 which passed in 1985. DOR adopted a regulation (1994 Regulation 39-22-303.12(c)) has been in place for 25 years;
- The Colorado Supreme Court heard oral arguments on this issue involving two taxpayers on April 9, 2019. The CO Chamber lobbying team as well as other business interest groups and the CO Bar Association expressed concerns to the Department, the sponsors and the Governor's staff regarding the timing of the legislation and language in the declaration of the bill which appeared to circumvent a future Supreme Court decision on this issue;
- In the final week of Session, a stakeholder meeting was convened per the request of the opponents of the bill and ultimately, alternative language was agreed upon and amendments were adopted when the bill was heard during on the House Floor. The CO Chamber took "neutral" position on the bill as amended.
- Tax Council members Bruce Nelson and Rhonda Sparlin testified on the bill in the Senate Finance Committee and House Appropriations Committee.

Government Affairs Council

HB 19-1033 -- Local Governments Regulation of Nicotine Products (Sponsors: Representative Tipper & Senator Fields)

Position: **Oppose**

Bill Status: Signed by Governor on 3/28/19

- HB 1033 changes the regulation of cigarettes, nicotine products, and tobacco products by local governments;
- Under current law, a city may enact an ordinance or resolution prohibiting a minor from buying nicotine products or impose requirements stronger than state laws;
- HB 1033 allows counties to enact similar policies as the cities. The counties may also enact policies regulating the possession and purchase of nicotine products to minors under the age of 21.

HB 19-1034 – Minimum 2-person Crew on Freight Trains (Sponsors: Representatives Sullivan & Esgar / Senator Danielson)

Position: **Oppose**

Bill Status: Signed by Governor on 3/21/19

- HB 1034 requires a common carrier engaged in the transportation of freight by railroad to have at least 2 crew members aboard a moving freight train while the train is moving;
- The new law exempts helper services, trains primarily used for tourism purposes, caboose-attached locomotives or locomotive groups moving at 30 miles per hour or less, and trains unloading or loading freight at a speed of 10 mph or less;
- Fines for a violation include: \$250 to \$1,000 for a first offense, \$1,000 to \$5,000 for a second offense committed within 3 years, or \$5,000 to \$10,000 for a third or subsequent offense committed within 3 years.

HB 19-1245 - Vendor Fee Changes for Affordable Housing (Representatives Weissman / Senators Foote & Gonzales)

Position: **Oppose**

Bill Status: Signed by Governor on 5/17/19

- HB 1245 increases the state vendor fee allowance from the current rate of 3.33% to 4% as of January 1, 2020 and caps the allowance at \$1,000 per month per retailer;
- The bill allows the net revenue increase from the vendor fee change to be allocated to the Housing Development Grant Fund. At least one-third of this revenue will be awarded to affordable housing projects for households with incomes less than or equal to 30% of the area median household income;
- Background: Under current law, Colorado retailers are allowed to keep 3.3% of the State's sales and use tax collected and remitted on each sales transaction. This has historically been

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allowed due to the compliance and administrative burdens associated with collecting taxes under Colorado's very complicated tax system;

- The Tax Council opposed this bill because it limits the amount of reimbursement to retailers to a capped amount that may not be sufficient for covering the costs involved in collecting and reporting sales tax in multiple jurisdictions.

SB 19-217 - Creation of Healthcare Provider Lien (Sponsors: Senator Foote & Representative Snyder)

Position: **Oppose**

Bill Status: Died on 5/9/19 on House Calendar

- This bill if passed would have specified certain information to be provided by a healthcare provider to an injured party before he or she signs an agreement creating a healthcare provider lien;
- Background: A healthcare provider lien is a lien created by a healthcare provider to recover charges for medical care provided to a person injured by the negligence or wrongful act of another person. The lien is asserted against money received by the injured party from a claim against a third party or an uninsured or under-insured motorist insurance policy;
- SB 217 would have allowed an injured person to elect to create a "healthcare provider lien" rather than bill the injured person's health insurance or other insurance under which the injured person is a beneficiary. According to the bill, the liens could be purchased and assigned to third parties who can claim the full "billed" amount;
 - Under the bill, future care would be billed to an insurance provider if the injured party or his or her lawyer notifies the healthcare provider that they have obtained health insurance;
 - Concerns by CO Chamber members were that there would be a de facto determination that the billed amount is owed once liability is proven, regardless of whether a claimant's medical bills were already paid by health insurance or another source;
 - The bill died on the final day of Session on the House calendar.

SB 19-225 – Rent Control (Sponsors: Senator Gonzales & Representative Lontine)

Position: **Oppose**

Bill Status: Died on 5/2/19 on Senate Calendar

- Current law prohibits a local government from enacting laws that control rent on private residential real property, or private residential housing units. SB 225 would have removed the prohibition and allowed local governments to enact local laws or regulations that stabilize rent on private residential property;
- The bill died on Senate 2nd Reading calendar based on a failure of support from legislators on both sides of the aisle.

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SB 19-234 – Sunset Professional Review Committee (Sponsors: Senators Rodriguez & Foote / Representative Weissman)

Position: Support

Bill Status: Signed by Governor on 5/17/19

- SB 234 continues the registration and reporting requirements of professional review committees under the Colorado Medical Board and the State Board of Nursing until September 1, 2030;
- The Department of Regulatory Agencies (DORA) released a sunset review in October 2018 after a nine-month investigation recommending that the Sunset Professional Review Committee Act (CPRA) be reauthorized and determined that the Act positively contributed to patient safety and professional development;
- Background: A professional review committee evaluates the competence, quality and appropriateness of patient care provided by, or the professional conduct of a licensed physician, physician assistant or advanced practice nurse. Certain adverse actions identified by professional review must be reported to the state licensing board.

SB 19-237 – Consumer Protection Act Damages (Sponsors: Senator Rodriguez /Representative Roberts)

Position: Oppose

Bill Status: Died on 5/3/19 in House Committee on Finance

- This bill if passed would have clarified that a plaintiff in an individual action under the Colorado Consumer Protection Act may be awarded damages equal to the sum of \$500 per violation. The bill also clarified that in a class action, damages including injunctive relief and attorney fees may awarded to the class;
- The bill was introduced late in the Legislative Session and died in the final week of Session in the House Finance committee based on concerns with the late introduction and lack of a stakeholder process.

SB 19-243 Prohibit Food Establishments' Use of Polystyrene (Sponsors: Senators Moreno & Foote / Representatives Cutter & Singer)

Position: Oppose

Bill Status: Died on 5/1/19 on Senate Calendar

- This bill prohibited a retail food establishment from distributing an expanded polystyrene product to use as a container for off-premises, ready-to-eat food on or after January 1, 2024. If the establishment has a supply of EPS products on January 1, 2024, it was permitted to exhaust its supply;
- The bill died on the Senate 2nd Reading calendar in the final week of Session.



Board of Directors' Bills

HB 19-1257 & 19-1258 Voter Approval to Retain Revenue for Education & Transportation

(Sponsors: Reps. Becker & McCluskie / Senators Court & Priola)

Position: **Support**

Bill Status: Sent to Governor on 5/14/19

- The Board of Directors of the Colorado Chamber took a support position on House Bills 1257 and 1258 when introduced. The bills allow voters to decide whether the state can keep excess revenues under the Taxpayer Bill of Rights (TABOR) and allocate one-third of the State's budget to transportation, higher education and public schools;
- The CO Chamber has supported many versions of legislation adopted in prior Sessions that helped to increase funding for transportation needs based on the concerns of Chamber members that transportation needs are not being adequately met. CO Chamber lobbyists testified in support of the bill.