

## THE 2018 LEGISLATIVE SESSION . . . A FAIRLY QUIET ONE FOR THE PROPERTY & CASUALTY INSURANCE INDUSTRY

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### OVERVIEW

The 2018 legislative session adjourned on Wednesday, May 9, 2018. The 2018 legislative session marked the fourth consecutive year where one party controlled one legislative chamber and the other party controlled the other legislative chamber. Due to unusual circumstances, the margin by which Republicans controlled the Senate and Democrats controlled the House was, at times, in flux. For example, in the months leading up to the 2018 legislative session, Republicans held an 18-17 majority in the Senate. However, with less than two weeks before the commencement of the legislative session, Senator Cheri Jahn (Wheat Ridge) announced she was leaving the Democratic Party and would serve the remainder of her term as an Independent. As such, the 2018 legislative session commenced and ended with Republicans holding an 18-16-1 majority in the Senate.

In the House, the 2018 legislative session commenced with Democrats holding a 37-28 majority. This margin, however, changed due to the bizarre circumstances that occurred moments before the House expelled former Representative Steve Lebsack (Thornton) for violating sexual harassment and retaliation policies. Moments before his expulsion, former Representative Lebsack switched his party affiliation from Democrat to Republican, which subsequently allowed Republicans to fill the vacancy created by his expulsion. As such, the 2018 legislative session ended with Democrats holding a 36-29 majority in the House.

Notwithstanding the split legislature, the House and Senate managed to reach compromises during the last few days of the legislative session on three significant issues confronting the State of Colorado, including reforming the public pension system (PERA), increasing funding for transportation, and reauthorizing the Colorado Civil Rights Commission.

Finally, the 2018 legislative session proved to be a fairly quiet one for the property and casualty ("P&C") insurance industry. Nevertheless, the legislative session saw the introduction of a handful of bills impacting the P&C insurance industry. These bills addressed issues relating to personal data security, auto insurance, property insurance appraisals, wildfire mitigation funding, and workers' compensation insurance. The following is a summary of bills the Legislature introduced during the 2018 legislative session impacting the P&C insurance industry.

### PERSONAL DATA SECURITY

In response to various personal data security breaches that made national headlines, the Legislature introduced several bills to protect consumers from having their personal information unlawfully accessed. [HB 1128](#), which impacts virtually every sector of the business community, received significant attention and scrutiny during the legislative session.

In the months leading up to the legislative session, the Attorney General's Office circulated a draft bill seeking to strengthen existing protections for consumers whose personal information is compromised

due to a security breach. This draft bill became the foundation for the introduced version of [HB 1128](#). Hall & Evans, LLC (“H&E”) and the business community actively participated in a series of stakeholder meetings hosted by the Attorney General’s Office to strike a balance between protecting consumer information and limiting the extent of regulatory burdens imposed on businesses. In addition, H&E met several times with the sponsors of [HB 1128](#) to discuss concerns with the introduced version of [HB 1128](#). After several months of negotiations, a compromise was reached and the sponsors of [HB 1128](#) agreed to significantly amend [HB 1128](#) to address many of the concerns raised by H&E and the business community. The following is a summary of that compromise.

Current law requires a business to notify affected residents, under certain circumstances, that it suffered a security breach. [HB 1128](#) requires the notice to be issued within 30 days after the date the business determines the security breach occurred. However, under current law, a business that is regulated by state or federal law and maintains procedures for a security breach in accordance with the requirements of its state or federal regulator is in compliance with the foregoing notification requirements.

Under [HB 1128](#), a business must also notify the Colorado Attorney General’s Office (“AG’s Office”) of the security breach within 30 days after the date the business determines the security breach occurred, if the security breach is reasonably believed to have affected at least 500 residents. However, notice to the AG’s Office does not need to be issued if the business determines the misuse of information about a resident has not occurred and is not likely to occur. [HB 1128](#) also clarifies that notice to affected residents and the AG’s Office does not need to be issued for the breach of encrypted information, unless the encryption key was also acquired or is reasonably believed to have been acquired.

Current law also requires a business to develop a policy for the destruction or disposal of paper documents containing personal identifying information. [HB 1128](#) clarifies the policy must be in writing and apply to electronic documents as well. However, [HB 1128](#) exempts a business from these requirements if the business is regulated by state or federal law and maintains procedures for the disposal of documents containing personal identifying information in accordance with the requirements of its state or federal regulator.

Finally, [HB 1128](#) requires a business to implement reasonable security procedures to protect personal identifying information from being unlawfully accessed. These security procedures must be appropriate for the nature of the personal identifying information and the nature and size of the business and its operations. However, [HB 1128](#) exempts a business from these requirements if the business is regulated by state or federal law and maintains procedures for the protection of personal identifying information in accordance with the requirements of its state or federal regulator.

The Governor signed [HB 1128](#), as amended, into law on May 29, 2018.

## AUTO INSURANCE

Legislation impacting the auto insurance industry was not at the forefront during the legislative session. The Legislature, however, still managed to pass one bill regarding the Automobile Theft Prevention Board and three bills regarding electronic motor vehicle records.

[HB 1240](#), a priority for several auto insurers, reauthorizes and continues the Automobile Theft Prevention Authority and the Automobile Theft Prevention Board until 2029. The Governor signed [HB 1240](#) into law on May 4, 2018.

In 2017, the Legislature enacted [SB 17-251](#), which allowed insurers, under certain circumstances, to use the Department of Revenue's electronic system to access owner and lienholder information pertaining to a motor vehicle. This year, the Legislature introduced [SB 183](#), a priority for several auto insurers, which clarifies that an insurer's agent may also use the Department of Revenue's electronic system to access owner and lienholder information pertaining to a motor vehicle. The Governor signed [SB 183](#) into law on April 12, 2018.

[HB 1299](#) authorizes the Department of Revenue ("DOR") to establish a system allowing the electronic transmission of motor vehicle registrations, liens, and titling information. The bill also authorizes DOR to adopt rules allowing DOR to maintain motor vehicle titling information electronically; accept electronic signatures on documents, including motor vehicle title transfers, odometer disclosures, and powers of attorney; eliminate any notarization requirements for signed documents; allow parties to electronically file and release motor vehicle lien information; and allow third-party providers to electronically process motor vehicle registrations, liens, and titling information. The establishment of the foregoing system, however, may not be funded from General Fund dollars. The Governor signed [HB 1299](#) into law on May 29, 2018.

[SB 255](#), also a priority for several auto insurers, clarifies that certificates of title, documents necessary to issue certificates of title, and signatures on motor vehicle records or documents may not be denied legal effect simply because they appear in electronic form. The Governor signed [SB 255](#) into law on June 6, 2018.

### PROPERTY INSURANCE APPRAISALS

Last year, [HB 17-1319](#), sought by the public adjusters, would have very narrowly defined the conditions an appraiser involved in a property insurance claim must satisfy to be considered impartial. The public adjusters, through [HB 17-1319](#), intended to circumvent evolving case law in Colorado that more broadly defines the conditions an appraiser involved in a property insurance claim must satisfy to be considered impartial. H&E worked closely with the P&C insurance industry to educate the sponsor of the bill of the true intent behind [HB 17-1319](#). These efforts proved to be worthwhile as the sponsor of the bill ultimately asked the House Judiciary Committee to kill [HB 17-1319](#).

This year, the public adjusters sought the passage of [HB 1153](#). [HB 1153](#) would have narrowly defined the specific facts an appraiser or umpire involved in a property insurance appraisal must disclose to demonstrate their impartiality and neutrality. Some, but not all, P&C insurance carriers were opposed to [HB 1153](#). As such, they lobbied against the bill. These efforts proved to be worthwhile as the House Finance Committee killed [HB 1153](#) on March 19, 2018.

### WILDFIRE MITIGATION FUNDING

As introduced, [HB 1322](#), the state appropriations bill, would have appropriated \$1 million to the Department of Public Safety for wildfire mitigation programs in the 2018-19 fiscal year. As the House was considering [HB 1322](#), H&E worked closely with the P&C insurance industry to determine if additional funding for wildfire mitigation programs could be secured. Ultimately, these efforts were successful as the House and Senate agreed to increase the funding for wildfire mitigation programs by \$2 million for a total of \$3 million. The Governor signed [HB 1322](#), which includes \$3 million for wildfire mitigation programs, on April 30, 2018.

## WORKERS' COMPENSATION INSURANCE

Legislation impacting the workers' compensation insurance industry centered on benefits to non-resident employees temporarily working in Colorado, the purchase of occupational accident policies in lieu of workers' compensation policies, and reserve limitations for the Workers' Compensation Cash Fund.

At the request of the Colorado Wyoming Petroleum Marketers Association, the Legislature introduced [HB 1308](#). [HB 1308](#) exempts a non-resident employer and its employee who is regularly employed outside of Colorado from Colorado's workers' compensation insurance laws while the employee is temporarily working in Colorado so long as the non-resident employer furnishes coverage under the workers' compensation insurance laws of the state in which the employee is regularly employed and such coverage applies to the employee while temporarily working in Colorado. However, [HB 1308](#) requires the state in which the employee is furnished coverage to be contiguous to Colorado, recognize the foregoing exemption, and provide the same exemption from its workers' compensation insurance laws for Colorado employers whose employees are temporarily working in that state. Presently, the State of Wyoming satisfies these requirements. The Governor signed [HB 1308](#) into law on April 30, 2018.

[SB 178](#) allows commercial vehicle operators to obtain an occupational accident insurance policy in lieu of a workers' compensation insurance policy. The Governor signed [SB 178](#) into law on May 4, 2018.

[HB 1429](#), a priority for the Division of Workers' Compensation, exempts the Workers' Compensation Cash Fund from Colorado's year-end limitation on uncommitted reserves in cash funds, which presently is 16.5% of the annual amount expended from the cash fund. The Governor signed [HB 1429](#) into law on June 6, 2018.

## MISCELLANEOUS BILLS

The Legislature also introduced several other bills on a wide array of topics impacting the P&C insurance industry. These bills covered topics relating to crime insurance for public entities, bond requirements for public administrators, county court claim amounts, snow removal service contracts, and liens on insurance claim payments.

### **Crime Insurance for Public Entities**

[HB 1140](#) authorizes a public entity to purchase crime insurance to protect the public entity from any dishonesty, theft, or fraud by a public official or employee whenever the purchase of a personal surety bond is required by law. The Governor signed [HB 1140](#) into law on March 15, 2018.

### **Bond Requirements for Public Administrators**

[SB 165](#) increases from \$25,000 to \$100,000 the amount of a general bond a public administrator must maintain and clarifies that a deputy public administrator must also maintain a general bond in the same amount. The Governor signed [SB 165](#) into law on April 2, 2018.

### County Court Claim Amounts

[SB 56](#) modifies the value of a claim that can be filed in county court. As introduced, [SB 56](#), a priority for the Colorado Judicial Branch, would have increased from \$15,000 to \$35,000 the value of a claim that can be filed in county court. As the House was considering the bill, one of the House sponsors of the bill sought to increase the value of a claim, including legal fees, that can be filed in county court to \$45,000. As a result, H&E met with this House sponsor to express concerns with the changes to the bill he was seeking. In addition, H&E worked with the P&C insurance industry and the Civil Justice League to obtain a compromise on the bill. Ultimately, a compromise was reached, and the sponsors amended [SB 56](#). As amended, [SB 56](#) increases from \$15,000 to \$25,000 the value of a claim that can be filed in county court and requires the State Court Administrator to analyze case information to determine if the cap on the value of the claim that can be filed in county court should be further increased. The Governor signed [SB 56](#), as amended, into law on May 29, 2018.

### Snow Removal Service Contracts

[SB 62](#) prohibits a snow removal service contract from requiring one party to indemnify the other party, hold the other party harmless from liability, or defend the other party against liability, for damages resulting from the acts or omissions of the other party. The Governor signed [SB 62](#) into law on May 30, 2018.

### Liens on Insurance Claim Payments

In 2016, the Legislature enacted [HB 16-1165](#), which authorized the State of Colorado to issue a lien to an insurance company for personal injury liability, wrongful death, and workers' compensation claim payments greater than \$1,000 owed to someone who owes child support payments. In addition, [HB 16-1165](#) authorized an insurance company to request that a claimant provide the insurance company with his or her date of birth, address, and social security number. Finally, [HB 16-1165](#) allowed insurance companies to voluntarily participate in a program (Child Support Lien Network) to facilitate the discovery of potential claim payments owed to claimants who owe child support payments.

This year, the Legislature introduced [HB 1363](#), which requires insurance companies to participate in the Child Support Lien Network to facilitate the discovery of potential claim payments owed to claimants who owe child support payments. The Governor signed [HB 1363](#) into law on June 6, 2018.