

# The CBA's 2021 Legislative Session in Review

BY ANDREW WHITE

---

*This article provides an overview of the CBA's legislative efforts during the Colorado General Assembly's 2021 session.*

---

**L**ike the 2020 session, this year's legislature was largely defined by its postponement by and response to the COVID-19 pandemic. The 2021 Colorado General Assembly began cautiously as the virus spread unabated, ramped up as vaccines brought case numbers under control, and ended with a historic number of bills adopted when it adjourned its regular session on June 11. For its part, the CBA had a prolific and successful year at the legislature with six of its priority bills already signed into law.

Governor Polis had until July 11 (30 days from the adjournment of the General Assembly) to take action on the 2021 bills. In a typical year, this deadline would be in early June. Accord-

ingly, at the time this article was prepared for publication, executive action on a number of bills remained outstanding. Therefore, a more comprehensive discussion of the legislative session will be included in a subsequent *Colorado Lawyer* issue.

## **A Historic Session**

Concerned about a potential wave of post-holiday coronavirus infections, the legislature postponed the bulk of its session in hopes of reduced case numbers and the prospect of a vaccine. The legislature temporarily convened for just three days in mid-January to address only a handful of pressing issues and then temporarily adjourned for five weeks, reconvening

on February 16. The legislature, empowered by last year's Colorado Supreme Court decision in *In re Interrogatory on House Joint Resolution 20-1006*,<sup>1</sup> paused its constitutionally limited 120-day session, recapturing time that would have otherwise been lost during its temporary adjournment. It was thus able to push back its final adjournment from early May to mid-June.

Social distancing, masking, and plexiglass separating legislators' desks fundamentally changed how the capitol building operated. Lobbyists and members of the public navigated a new world of virtual committee hearings and virtual legislative meetings. As Colorado's vaccination rates climbed through the spring, day-to-day work at the capitol slowly started

to feel closer to normal with the resumption of in-person meetings and committee hearings.

Despite the session's disjointed and socially distanced start, the legislature placed a remarkable volume of legislation on the governor's desk—503 of 623 bills introduced. This represents the greatest number of bills passed by the legislature in the past four years and includes significant legislation relating to criminal justice reform, affordable housing, tenants' rights, expanding fee funding for transportation, creating a state-based health insurance option, and modifying marijuana regulation.

### **The CBA's Voice was Heard**

CBA members met the challenges of the 2021 session head-on and made our voice heard. The CBA kept busy making its mark on legislation by meeting with legislators and stakeholders and testifying on legislation. And the CBA's sections and committees reviewed all 623 bills introduced by the legislature. Ultimately, the CBA, under the direction of the Legislative Policy Committee, actively lobbied 44 bills. Our members and lobbying team participated in hundreds of legislative meetings and legislator pull-asides, and they made 53 appearances before legislative committees to provide testimony. Despite the constraints caused by the pandemic, CBA members were an active presence at the capitol.

Of the 44 bills that the CBA actively lobbied, it proposed and drafted six. Each of these bills was shepherded by a bipartisan group of sponsors, and each was adopted by the legislature without objection. These six bills are summarized below.

#### ***HB 21-1004: Colorado Uniform Electronic Wills Act***

During the COVID-19 pandemic, CBA's estate planning and elder law practitioners recognized the difficulty of executing wills while adhering to social distancing orders. While the governor and secretary of state adopted executive orders and temporary rules to allow for remote notarization of wills and codicils, those temporary measures could not be extended past December 31, 2020.

Recognizing the continued need to execute wills and codicils, estate planning experts from the CBA worked to adapt the Uniform Electronic Wills Act, adopted by the national Uniform Law

Commission in 2019, and drafted HB 21-1004 to conform the Uniform Act to Colorado statutes.

As one of the handful of bills the legislature considered during its brief January 13 to 15 session, HB 21-1004 passed in a remarkable three days. The governor signed the bill into law on January 21. It was one of the first laws of the 2021 session enacted.

#### ***HB 21-1031: Continuing Jurisdiction of the Trial Court During Family Law Appeals***

In January 2020, the Colorado Supreme Court issued a decision holding that trial courts were not authorized by statute to exercise continuing jurisdiction to modify parenting orders during the pendency of appeals in *In re the Parental Responsibilities of W.C.*<sup>2</sup> Before *W.C.*, Colorado attorneys and judges generally understood that family courts had continuing jurisdiction to issue modification orders in four areas when an appeal is pending: parenting time, decision-making responsibility, child support, and maintenance.

CBA family law practitioners drafted and recommended HB 21-1031 to re-vest this continuing jurisdiction with the trial court. The governor signed the bill into law on May 7.

#### ***HB 21-1124: Expand the Ability to Conduct Business Electronically***

CBA's business law practitioners make regular recommendations on Colorado's corporate code so that Colorado law reflects the business community's needs and incorporates best practices. Before the adoption of HB 21-1124, the Colorado Business Corporation Act required notices under its provisions to be provided in a tangible form. The bill allows for businesses and notice recipients to offer and request electronic notice.

Similarly, shareholder meetings under the Colorado Business Corporation Act were required to be held, nominally, "at a place." This language implied that at least some participants needed to attend in person. HB 21-1124 removes this provision and allows for shareholder meetings to be held virtually by video and/or telephonic participation. While this change was under consideration before COVID-19, the pandemic highlighted the need for businesses to have greater flexibility in

conducting shareholder meetings, particularly during times of social distancing.

The governor signed the bill into law on April 19.<sup>3</sup>

#### ***SB 21-162: Colorado Uniform Trust Code Part 5***

In 2018, the legislature adopted in SB 18-180 the most recent update to the Colorado Uniform Trust Code, except for part 5, which was left out because trust and estate practitioners and other stakeholders did not reach consensus regarding creditor access to trust assets. Following two years of stakeholder meetings and committee work, CBA members reached agreement and drafted SB 21-162 for consideration by the legislature.

The governor signed the bill into law on May 21, updating this final section of the Colorado Uniform Trust Code.

#### ***SB 21-171: Uniform Fiduciary Income and Principal Act***

In 2019, the Uniform Law Commission adopted the Uniform Fiduciary Income and Principal Act (UFIPA), an update to the Uniform Principal and Income Act (UPIA), which the legislature enacted in 2000 in HB 00-1326. As compared to UPIA, UFIPA updates and modernizes the law to reflect modern trust accounting practices that place greater emphasis on flexibility, notably the trend toward total return investment strategies.

CBA trust and estate practitioners spent several years adapting UFIPA to Colorado statutes and proposed SB 21-171, which differs from the Uniform Act to the extent the bill preserves existing aspects of the law to avoid adversely affecting trust instruments that were based on prior versions of UPIA.

The governor signed the bill into law on May 17.

#### ***SB Bill 21-195: Notarization of Certain Probate Documents***

CBA elder law practitioners brought forward a proposal to align execution requirements of non-testamentary probate instruments with those of wills. In 2009, the legislature updated execution requirements for wills, allowing for either notarization or witnessing, in HB 09-1287.

However, the legislature did not similarly address the execution of living wills, organ donation forms, or medical powers of attorney that contain declarations regarding life sustaining procedures. SB 21-195 enables Coloradans to execute these probate instruments by either notarization or witnessing, thus simplifying and standardizing execution requirements.

The governor signed the bill into law on May 7.

### Thanks to Our Partners

The CBA's productive 2021 legislation session resulted from the hard work of its members and legislators. The CBA extends a sincere thanks to the sponsors of our legislative agenda for ushering our bills successfully to Governor Polis:

- HB 21-1004: Representatives Marc Snyder and Matt Soper, and Senators Bob Gardner and Pete Lee
- HB 21-1031: Representatives Lindsey Daugherty and Dan Woog, and Senators Pete Lee and Bob Gardner
- HB 21-1124: Representatives Shannon Bird and Matt Soper, and Senator Pete Lee
- SB 21-162: Senator Bob Gardner, and Representatives Marc Snyder and Matt Soper
- SB 21-171: Senator Bob Gardner, and Representatives Marc Snyder and Matt Soper
- SB 21-195: Senator Tammy Story, and Representatives Marc Snyder and Matt Soper

CBA's effectiveness is due in no small part to countless hours devoted by dozens of volunteer members who draft CBA-priority bills, analyze hundreds of other bills as they are introduced, participate in legislative meetings, and testify at the legislature. The CBA is also fortunate to have contract lobbyists Heidi Wagner Morgan and Amber Valdez doggedly working on our behalf as our day-to-day voices at the capitol.

### Conclusion

While the 2020 legislative session was unprecedented and extraordinary, the 2021 legislative session ably followed suit. Every legislative meeting CBA members attended was by video or telephone, and most of the 53 times that CBA

members testified before legislative committees they did so remotely via video. Despite these unique circumstances and the limitations of remote participation, CBA members rose to the challenge and achieved unanimous adoption of each of our priority bills. And undeterred by a peculiar 2021 legislative session, CBA members are already at work crafting our 2022 legislative agenda. 



**Andrew White** is the CBA director of legislative relations. Readers are encouraged to contact him to receive periodic email updates during the legislative session or 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, [awhite@cobar.org](mailto:awhite@cobar.org).

### NOTES

1. *In re Interrogatory on House Joint Resolution 20-1006*, 2020 CO 23.
2. *In re Parental Responsibilities of W.C.*, 456 P.3d 1261 (Colo. 2020).
3. HB 21-1124 is discussed in detail in Lidstone and Loewenstein, "2021 Amendments to Statutes Governing Colorado Entities—Expanding the Ability to Conduct Business Activities Electronically," 50 *Colo. Law.* 24 (Aug./Sept. 2021), <https://cl.cobar.org/features/2021-amendments-to-statutes-governing-colorado-entities>.

**METRO VOLUNTEER LAWYERS**  
*Make a Difference*

**VOLUNTEER WITH MVL'S POWER OF ATTORNEY CLINICS**

 **METRO VOLUNTEER LAWYERS**  
 a Denver Bar Association program  
in collaboration with the Adams/Broomfield, Douglas/Elbert, and First Judicial District Bar Associations

**DENBAR.ORG/MVL | 303-830-8210**