

CBA's 2023 Legislative Session in Review

BY TYLER MOUNSEY

This article provides an overview of the CBA's legislative efforts during the Colorado General Assembly's 2023 session.

On Monday, May 9, the 74th Colorado General Assembly adjourned after a session marked by conflict and division. During their 120 days of work, many conversations and debates were dominated by partisan and intraparty conflicts. Despite this widening gap of opinions, the CBA succeeded in fulfilling its mission of supporting the justice system and a wide variety of legal issues for all Coloradans.

By the Numbers

At the Capitol, with so many different narratives and opinions on every policy topic, often it's best to first agree on the facts. For the legislative session, those facts depend on a thorough analysis of many floor votes and bills in the recent session. The following data is pulled from a careful analysis of information from the

State of Colorado General Assembly website.

In 2023 the state legislature introduced 617 bills and passed 78% of them. That's the second-highest percentage of passed bills in 11 years, while the total bills introduced is the third lowest since 2013.

Governor Polis vetoed 10 of the 484 bills, which is the highest number since his first election. Of the 10 that were vetoed, half had bipartisan sponsorship. And all but 56 bills that became law had bipartisan support. Despite that, this year saw a decline in not only bipartisan support but also unanimous votes. Only 60 measures—about 13% of all bills that became law—passed with unanimous support, the lowest in four years.

Anyone who pays attention to any media is familiar with the gridlock on most levels of government. The difference in this session, partly

as a result of the 2022 elections, is that dissension was not only across the aisle but also between moderate and progressive lawmakers of the same party. With 40% of the general assembly serving their first year, discord is expected, but the differences were made clear by their final votes.

In some instances, we saw moderate Democrats siding with Republicans. In others, we saw progressive Democrats voting against their own party, especially around criminal justice bills. This new dynamic created the need for House Democrats to get help from the GOP more than once because they didn't have enough votes within their own caucus.

Aside from the division in the political landscape, cost was a point of contention in various bills. Ballot measures that included the income tax cut, universal school lunch,

and affordable housing spending increase put significant pressure on the upcoming budget. The 2023–24 budget turned out to be the largest in history and about \$1.2 billion more than the current year’s spending plan.

There were large increases for K-12 education, housing, workforce development, and covering the expiration of federal Medicaid matching funds. Other allocations included \$103 million for workforce-related legislation, \$2.3 billion to the general fund reserve to prepare for the next economic downturn, and \$221 million for housing-related legislation. In particular, SB 23-303 and HB 23-1311, as well as funds for property tax relief and implementation of Proposition 123, all applied significant squeeze to a Joint Budget Committee that had all new members except for its chair.

The success of legislative measures depends on the narrative, timing, and political atmosphere—and the data is clear: this year’s session tells a story of conflict not only among the elected officials but also among committees and associations working throughout the Capitol.

CBA Under the Golden Dome

The CBA’s legislative agenda is guided by three priorities: (1) advancing the practice of law; (2) protecting a fair, impartial, and diverse judiciary; and (3) improving access to the justice system for all Coloradans. Careful consideration of the political landscape is important for our legislative work, and we continually work to solidify our members’ expertise as a resource for stakeholders and elected officials.

That work is primarily guided by the Legislative Policy Committee (LPC), the 13-member committee charged to represent the CBA as a whole and help define its legislative positions. With all member sections participating, we easily reviewed nearly all bills introduced during this session. In the end, the CBA took official positions on 22 measures. Of those, the following stood out for further comment.

Judicial Discipline

For several years, judicial discipline has been at the forefront of attorneys’ minds, and it featured heavily in the media and in legislation in 2022. It’s no surprise, then, that this topic was the

subject of three bills this session. During the interim, legislators created a new structure for judicial discipline that is more in line with other states but still a hefty departure from our previous systems. The judicial branch worked tirelessly with all stakeholders to be part of the solution. In the end, the CBA supported all three bills discussed below. All measures were

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passed—two were signed and one requires a constitutional amendment.

HCR 23-1001: Judicial Discipline Procedures and Confidentiality

This concurrent resolution amends section 23 of article VI of the Colorado Constitution and makes several important changes, including:

- clarifies the Commission on Judicial Discipline’s (JDC) ability to dismiss complaints;

- repeals JDC’s ability to hold formal judicial disciplinary proceedings;
- creates a new and independent adjudicative board that will comprise a panel to conduct formal proceedings;
- revises the standard of review for the Supreme Court when reviewing decisions of the panel;
- makes proceedings public when formal hearings commence; and
- creates a rulemaking committee to adopt further rules for the judicial discipline process.

The resolution passed, and since this is amending the state Constitution, voters will see this issue on their ballots in 2024.

HB 23-1019: Judicial Discipline Procedures and Reporting

A companion bill to HCR 23-1001, this bill adds definition to the judicial discipline process and related reporting. For the new rulemaking committee, it outlines the timing of notice to the JDC and to the new judicial discipline adjudicative board. It requires the JDC to maintain additional data and outlines the expectation for the public to be able to make requests or receive updates on complaints.

HB 23-1205: Office of Judicial Ombudsman

Throughout the last several years, legislators took notice that the public needed additional support in the judicial discipline process. This third bill proved to be the most debated judicial discipline bill. The Colorado Women’s Bar Association helped guide the conversation, and we worked closely with them through the process.

The bill establishes the Office of the Judicial Ombudsman as an independent office. This office will be responsible for:

- creating an anonymous reporting system;
- helping complainants understand their rights; and
- reporting appropriate cases to JDC, OARC, law enforcement, and the judicial department.

Mixed Successes

The CBA took a position on other measures discussed below and noted in the accompanying

table. Among the many ideas considered, some went too far and others were a step in the right direction. Although we did not see the results we hoped for in every case, we are confident that our voice is vital across many public policy conversations.

HB 23-1190: Right of First Refusal to Purchase Qualifying Multifamily Residential Property by Local Government

One of the more contentious bills of the entire session, HB 23-1190 was strongly opposed by the CBA. The bill provided local government a right of first refusal to purchase a qualifying property for a price substantially identical to an offer that a residential seller receives on the property. With the help of CBA members testifying and researching, we made a compelling case that this bill would be the antithesis of creating affordable housing. After many conversations and amendment proposals, there was a strong belief that it still had the support to pass and be signed. Thankfully, toward the end of the session, some of that support waned and an opportunity for further amendments arose. Despite our continued pressing, the bill passed and seemed destined for the Governor’s signature. However, the Governor and his staff made a welcomed last-minute decision to veto this bill.

Our opposition was rooted not with the idea but with the execution. The CBA welcomes future conversations on ways to fund and support sustainable affordable housing across the entire state.

SB 23-090: Uniform Commercial Code 2022 Amendments

The CBA continues to have a great working relationship with the Colorado Uniform Law Commission. That work was even more evident in the continued amendments to the UCC. Of course, there are always some obstacles, and this year we had concerns about cryptocurrency in commerce. The CBA supported this measure and believed it set forth a responsible framework for treatment of other potential digital assets, specifically electronic money or “Central Bank Digital Currency.” A bill adopting the UCC amendments was recently vetoed in South Da-

kota because of its governor’s concerns that the uniform law went too far with definitions related to cryptocurrency and could result in future problems. In an effort to prevent Colorado’s bill from stalling for similar reasons, the CBA Business Law Section presented well-crafted arguments pointing out the legal and logical flaws with Governor Noem’s concerns.

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Despite our best efforts, those concerns did take root. Working with sponsors and the Colorado Uniform Law Commission, thoughtful amendments were brought forth to protect the rest of the bill. The bill passed with amendments and was signed. While not the desired outcome, the CBA remained clear about its concerns


about altering the bill, and we believe we will continue to be at the forefront of this issue moving forward. We are especially thankful to the sponsors and the Governor’s office for working with us through the process.

HB 23-1280: Colorado Access to Justice Commission

The CBA continued its longtime support of the Colorado Access to Justice Commission by backing this bill that codified the commission’s authority and duties. Over many decades, the need for access to justice for Coloradans has steadily increased, particularly as obstacles have also increased. This continues to be a priority for the CBA. This bill was passed and signed into law, solidifying the commission’s work toward expanding access and ensuring fairness in the justice system.

Looking to the Future

The legislative session was one of mixed successes. Division and disenfranchisement remained in the thoughts of legislators and associations every day. Understanding that each legislative session is never perfect, the CBA remained focused on how we can advance our mission through exposing our members and sections to the legislative process.

By the end of the 120-day session, it became clear that the reality of our new political landscape has impacted our future legislative approach. Thankfully, the work we’ve accomplished in previous years is also the work that will carry our efforts forward. The CBA will continue connecting our members to legislators. We will continue participating in inclusive conversations with people on both sides. Most of all, we will continue cementing our position as the foremost legal experts on legislation in Colorado. We welcome engagement from our members, and we look forward to your joining us in these efforts. 



Tyler Mounsey 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—tmounsey@cobar.org.

CBA LEGISLATIVE EFFORTS

Bill Number	Bill Title	CBA Position	Bill Progress
HB 1019	Judicial Discipline Procedures and Reporting	Support	Signed/Enacted
HB 1095	Prohibited Provisions in Rental Agreements	Amend	Signed/Enacted
HB 1105	Homeowners' Association and Metropolitan District Homeowners' Rights Task Forces	Amend	Signed/Enacted
HB 1120	Eviction Protections for Residential Tenants	Oppose	Signed/Enacted
HB 1171	Just Cause Requirement Eviction of Residential Tenant	Oppose	Dead
HB 1178	Court Personnel and Domestic Violence Awareness	Amend	Signed/Enacted
HB 1184	Low-income Housing Property Tax Exemptions	Amend	Signed/Enacted
HB 1186	Remote Participation in Residential Evictions	Amend	Signed/Enacted
HB 1190	Affordable Housing Right of First Refusal	Oppose	Vetoed
HB 1205	Office of Judicial Ombudsman	Amend	Signed/Enacted
HB 1280	Colorado Access to Justice Commission	Support	Signed/Enacted
HB 1297	Prohibit Corporation Issuing Scrip in Bearer Form	Support	Signed/Enacted
HCR 1001	Judicial Discipline Procedures and Confidentiality	Support	Signed/Enacted
SB 047	Confirmed Funds for Closing and Settlement Process	Oppose	Dead
SB 058	Job Application Fairness Act	Support	Signed/Enacted
SB 077	Restrictions on Broker Engagement Contracts	Support	Signed/Enacted
SB 089	Uniform Family Law Arbitration Act	Amend	Dead
SB 090	Uniform Commercial Code 2022 Amendments	Amend	Signed/Enacted
SB 103	Update Colorado Recreational Use Statute	Support	Dead
SB 148	Illegal Drug Laboratory Property and Certification	Amend	Signed/Enacted
SB 178	Water-wise Landscaping in Homeowners' Association Communities	Amend	Signed/Enacted
SB 184	Protections for Residential Tenants	Amend	Signed/Enacted