LESS DRAMA, MORE SUBSTANCE:
PROPERTY & CASUALTY INSURANCE LEGISLATIVE HIGHLIGHTS

2024 SESSION OF THE COLORADO GENERAL ASSEMBLY

By Erin Snow, Esq. and Daniel Furman, Esq.

OVERVIEW

The 2024 legislative session adjourned on Wednesday, May 8, 2024. With a veto-proof Democratic supermajority in the House, and a near Democratic supermajority in the Senate, the 2024 legislative session marked the sixth consecutive year when the Democratic party controlled both chambers of the General Assembly, as well as the Governor's office. In the House, Democrats held a 46-19 majority. This dynamic rendered the minority Republican party effectively powerless, while creating a rift in the majority party between more moderate, reasonable Democrats and those on the far left. However, despite predictions of an intensely dramatic session, disagreements between these two Democratic factions did not ultimately define the session. While Democratic leadership sustained criticisms from both the right and far left, overall, Speaker Julie McCluskie and Majority Leader Monica Duran ran a productive calendar and avoided scenes of high conflict in the chamber.

The House Republican leadership faced its own crisis early in the legislative session when a video surfaced of then-Minority Leader Mike Lynch being pulled over for driving under the influence, which ultimately led to his resignation as the Minority Leader. The caucus then voted to replace Rep. Lynch with former Assistant Minority Leader Rose Pugliese as the new Minority Leader and picked Rep. Ty Winter as its new Assistant Minority Leader. Although both lawmakers were serving in their first term, they were able to lead their caucus in a thoughtful and principled way that also contributed to lowering the temperature at the Capitol, although the session was not entirely void of charged moments.

In the Senate, Democrats held a 23-12 majority. In general, the Senate lived up to its reputation as the more collegial chamber, although we experienced several late nights due to Republican filibusters intended to kill bills, as well as a fair amount of intra-party conflict among centrist and far-left Democrats.

Overall, 2024 was a busy year for the property and casualty ("P&C") insurance industry. While last year's session brought legislation focused on mitigating wildfire-related insurance issues, this year, we saw bills covering a wider variety of topics. The General Assembly managed to reach deals on several significant issues during the last days of the legislative session, including striking an agreement to raise caps for non-economic damages in both general liability and medical malpractice actions in exchange for the removal of ballot initiatives to eliminate all caps. In addition, the General Assembly passed a bill to regulate the use of artificial intelligence ("AI"), which Hall & Evans helped amend to exclude insurance carriers, whose use of AI for personal lines is already regulated by the Division of Insurance ("the DOI"). By contrast, the General Assembly was not able to reach a compromise on construction defect litigation issues. All bills in this arena failed, leaving the status quo intact. Below is a summary of the bills that will have the biggest impact on the P&C insurance industry, as well as an overview of relevant bills that did not make it across the finish line this year.

Litigation Caps for Non-Economic Damages

One of the biggest challenges heading into the 2024 legislative session was the threat posed by ballot initiatives filed by the plaintiffs' bar to eliminate litigation caps on noneconomic damages and wrongful death damages for general liability and medical malpractice claims. Caps on noneconomic damages for medical malpractice actions had not been raised in over twenty years. The plaintiffs' bar's ballot initiatives to eliminate all caps threatened to upend the litigation landscape in Colorado by forcing cases to trial under the danger of limitless jury verdicts for non-economic damages such as pain and suffering, loss of consortium, and disfigurement. In response, opponents filed competing ballot initiatives, including one to limit plaintiffs' lawyers' contingency fees to 25% of the amount awarded to the client.

Thankfully, after significant negotiations among stakeholders – chiefly among them, the insurance sector, including Hall & Evans and the American Property and Casualty Insurance Association (APCIA); the business community, led by the Colorado Chamber of Commerce; the medical community, led by COPIC, the largest medical malpractice insurer in Colorado; and the plaintiffs' bar – legislators reached a compromise in the final days of the legislative session. On Sunday, May 5, three days before *Sine Die*, a bipartisan group of legislators introduced HB 24-1472, which raises the damage caps for tort actions in accordance with the negotiated limits.

For civil actions filed after January 1, 2025, the bill increases the cap on general liability noneconomic damages from $729,790[1] to $1.5 million, and from $679,990[2] to $2.125 million for wrongful death damages, with both caps rising by the rate of inflation every two years starting in 2028. Over the course of five years beginning on January 1, 2025, the bill also incrementally increases the caps for noneconomic damages in medical malpractice actions from $300,000 to $875,000. The bill creates a new claim specifically for wrongful death resulting from medical malpractice and sets the damage cap for that claim at $1.575 million over the next five years. After five years, the medical malpractice caps will be adjusted biennially for inflation.

In addition, the bill adds a sibling or the heirs of a sibling of the deceased as parties who may bring a wrongful death action in certain circumstances. In exchange for the terms of this deal, both sides agreed to withdraw their competing ballot initiatives.

Artificial Intelligence ("AI")

On April 10, Senate Majority Leader Robert Rodriguez (D) introduced his much-anticipated "AI bill" (SB 24-205). The Senate Judiciary Committee did not take up the bill until April 24, leaving exactly two weeks for it to move through the legislative process. SB 205 imposes new regulations on developers and deployers of high-risk AI systems by requiring the use of reasonable care to avoid algorithmic discrimination. In other words, businesses that rely on consumer data to make decisions must ensure that the use of that data does not result in discrimination against certain groups of consumers.

SB 205 as introduced subjected insurance carriers to dual regulation by the Attorney General for use of consumer data that is already regulated by the DOI. Fortunately, Hall & Evans and other insurance industry lobbyists succeeded in exempting most of the insurance industry from SB 205, because in 2021,

[1] Colorado Secretary of State, Adjusted Rate of Damages Certificate. For all claims for relief that accrue on or after January 1, 2024, and before January 1, 2026, for C.R.S. 13-21-102.5(3)(a) & 13-21-102.5(3)(b).
[2] *Id.* for C.R.S. 13-21-203(1).

the General Assembly passed SB 21-169, which holds insurers accountable for testing their data systems to ensure they are not unfairly discriminating against consumers on the basis of a protected class, and requires insurers to take corrective action to address any harms that are discovered. Since the passage of SB 21-169, the DOI has begun the process of promulgating regulations for life insurance, private passenger auto insurance, and health insurance. SB 24-205, Section (7) states that an insurer or fraternal benefit society, or a developer of an AI system used by an insurer, is in full compliance with SB 205 if they are subject to the requirements of SB 21-169 and any related rules adopted by the DOI.

SB 205 mirrored a Connecticut bill, SB 2, which died before the end of that state's legislative session, leaving Colorado as the first state to pass a comprehensive law to regulate AI. Governor Polis signed SB 205 into law on May 17, 2024, clearly stating his reservations about the bill in his signing letter. While SB 205 went into effect upon its signing, its provisions do not take effect until February 1, 2026, leaving almost two years for the General Assembly to tweak the legislation to address concerns of various stakeholders.

WORKERS' COMPENSATION

This year, business groups and workers' compensation claimants' attorneys negotiated a workers' compensation bill, HB 24-1220, that, in part, focuses on benefit payment limits. The National Council on Compensation Insurance (NCCI), a client of Hall & Evans, analyzed a modified version of HB 1220, which proposed an increase to the maximum aggregate indemnity limits of combined Permanent Partial Disability (PPD) and Temporary Total Disability (TTD) indemnity benefits. For injured workers with an impairment rating less than or equal to 19%, the aggregate indemnity limit would increase to $185,000. Meanwhile, for injured workers with an impairment rating greater than 19%, the aggregate indemnity limit would increase to $300,000. NCCI estimated that the proposed change, if enacted in its modified version, could result in an impact between +0.8% ($8M) and +1.2% ($12M) on overall workers' compensation system costs in Colorado. These provisions in HB 1220 take effect on January 1, 2025, and apply to claims arising on or after this date.

Another workers' compensation bill (SB 24-149) prohibits the State of Colorado from retaliating against a state employee when communicating with or reaching an agreement with the state employee about a workers' compensation claim. The State may not suggest or require that the state employee involved in the workers' compensation claim resign and may not place any other restrictions on the state employee's ability to work for the State. In addition, if the State elects to self-insure workers' compensation claims, the bill requires the Department of Personnel & Administration ("the DPA") to send a request for interest to Pinnacol Assurance, the State's workers' compensation insurer of last resort, and at least five other insurance companies that provide workers' compensation insurance in Colorado, starting in 2026 and at least once every three years thereafter. For each request for interest obtained, the DPA is required to submit a report to the General Assembly that specifies the name of the responding insurance company; the total cost estimated; whether the State would be required to contract with a third-party administrator; a detailed description of the workers' compensation coverage that would be provided; the costs associated with the self-insurance selected by the State for the current calendar year; and whether the costs related to self-insurance increased or decreased compared to the previous calendar year. In addition, the first report must specify, over the previous three years, to which insurance companies the State sent requests of interest, the total number of insurance companies that responded to the requests, and the estimated cost reported in each received response. The Governor signed the bill into law on June 7, and the bill took effect immediately upon signature.

Personal Auto Insurance

Also, during the 2024 legislative session, Hall & Evans helped to negotiate a compromise with the plaintiffs' bar on legislation (HB 24-1440) requiring insurers to provide insureds with a document in Spanish to be created by the DOI that summarizes certain information, including the coverages and exclusions contained in a personal auto insurance policy. Hall & Evans worked tirelessly to convince the plaintiffs' bar that the bill's provisions should only apply to personal auto insurance policies. In exchange, the plaintiffs' bar agreed to repeal a law enacted in 2023 (HB 23-1004) that required an insurer to offer several policy documents to its insureds in the same language the insurer used to advertise in Colorado. The Governor signed HB 1440 into law on May 31, 2024, and the bill took effect immediately upon signature.

The General Assembly also passed new legislation prohibiting the use of mobile electronic devices while driving a motor vehicle, unless the driver is using a hands-free accessory (SB 24-065). Certain users are exempted, including an individual who is reporting an emergency; an employer or contractor of a utility who is responding to a utility emergency; an employee or contractor of a city or county acting as a code enforcement or animal protection officer; a first responder; or an individual in a parked motor vehicle. The bill sets penalties for violations of its requirements and allows the first violation to be dismissed if the individual can prove purchase of a hands-free accessory. The bill becomes law on August 7, 2024, and its provisions will take effect January 1, 2025.

Property Insurance Study Bills

One method the General Assembly employed to address other insurance-related topics during the 2024 legislative session was to require the DOI to conduct studies that might inform future legislation. One such bill (HB 24-1108) requires the DOI to study the market for P&C insurance policies to homeowners' associations (HOAs) and hotel owners. Introduced by Speaker Julie McCluskie (D), Rep. Judy Amabile (D), and Sen. Dylan Roberts (D), the bill requires that the study consider current market conditions, the long-term sustainability and availability of P&C insurance policies issued to HOAs, whether any captive insurance companies have been formed by an HOA or hotel owner, and whether such a formation could impact current market conditions. Speaker McCluskie has been particularly interested in regulating the affordability of P&C insurance policies to HOAs located in the mountain communities, which can be difficult to insure due to the high risk of wildfire.

Likewise, HB 24-1315 requires the DOI to study the remediation of residential premises that have been damaged by smoke, soot, ash, and other contaminants as a result of a fire. These are homes that avoided total destruction in the Marshall Fire and other recent fires but were nevertheless rendered uninhabitable by smoke and ash. The study will focus on existing practices to remediate these damaged homes and will make recommendations for uniform standards related to such remediation.

Both these bills go into effect on August 7, 2024, while the DOI must submit a report on both studies' findings and recommendations by January 1, 2026.

Insurance Model Acts

Legislators also passed model acts from the National Association of Insurance Commissioners ("NAIC"). HB 24-1119, Multi-State Tax Filing System for Insurance Taxes, requires insurance premium taxes, surplus lines taxes, and other associated state-specific insurance tax filings to be filed through a secure

web-based application identified by the DOI, including OPTins developed by the NAIC. The bill sailed through the process without much controversy and went into effect on March 22, when the Governor signed it.

Another model act, HB 24-1321, Insurance Holding Company Model Regulation, aligns the Colorado statutes with two NAIC model acts regarding insurance holding company systems and reinsurance. The bill updates the registration requirements for the ultimate controlling person of each insurer by adding new filing requirements to be included with the DOI's existing registration requirements. It also updates the standards for insurance holding company transactions subject to registration with the DOI; adds language concerning the confidential treatment of documents to include proprietary and trade secret documents and materials; and strengthens the regulatory tools that the DOI may use for the regulation of insurance holding companies.

In addition, HB 1321 incorporates a NAIC model policy on reinsurance into Colorado statute. The bill allows the DOI to adopt rules applicable to reinsurance relating to life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits; universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period; variable annuities with guaranteed death or living benefits; long-term care insurance policies; or other life and health insurance and annuity products as to which NAIC adopts model regulatory requirements with respect to credit for reinsurance. A reinsurance rule adopted pursuant to this subsection must apply to any treaty containing policies issued on or after January 1, 2015, or policies issued prior to January 1, 2015, if the risk pertaining to pre-2015 policies is ceded in connection with the treaty on or after January 1, 2015.

HB 1321 passed on April 29 and was signed into law on May 15. It will take effect January 1, 2025.

The travel insurance industry will see changes through HB 24-1060, which adopts in part the NAIC travel insurance model act. The bill requires travel insurance to be sold in accordance with the requirements of the model act for policies that are sold, solicited, negotiated, or offered in Colorado. However, unlike the model act, Colorado requires that an insurer offering or selling travel insurance must hold both property and casualty and accident and health lines of authority if the policy provides coverage for sickness, accident, disability, or death occurring during travel; emergency evacuation; or repatriation of remains. HB 1060 also makes conforming changes to existing law related to licensing limited lines travel insurance producers and registering travel retailers. The bill moved smoothly through the legislative process and was signed by the Governor in late April. It will go into effect on August 7, 2024.

Failed Construction Defect Litigation Bills

Governor Polis has emphasized the importance of increasing Colorado's supply of entry-level condominiums to alleviate the state's affordable housing crisis. Many in the construction industry headed into the 2024 legislative session hoping for construction defect litigation reforms to help re-boot the state's largely non-existent condominium-building market. Unfortunately, the General Assembly could not agree on a path forward on this issue. Competing bills ultimately died, leaving the status quo intact for at least another year.

Two bills in the Senate sought to address this issue in different ways. The "right to remedy" bill (SB 24-106) was introduced in early February by Sen. Rachel Zenzinger (D), Sen James Coleman (D), and Rep.

Shannon Bird (D), with a substantial list of bipartisan co-sponsors in both chambers. The bill raised the threshold vote of unit owners for a homeowners' association to file a construction defects lawsuit from a simple majority to 60%. It also sought to prevent lawsuits from being filed for purely technical code violations. The introduced bill offered builders the right to remedy defects by hiring a third party to fix them, but the Senate sponsors removed this provision to create consensus. The sponsors also modified the bill to require a verified danger of injury, loss of property, or inability for a home to function for a construction defect claim to proceed.

The Senate passed SB 106 on a 25-8 vote, but it languished on the calendar until being introduced in the House almost three weeks later. This delay chilled negotiations, as bill opponents, primarily the plaintiffs' bar, were never amenable to any provisions that would make it harder for condo owners to be able to sue builders. Eventually, negotiations lost all momentum, and Rep. Shannon Bird, the House sponsor, asked the House Transportation, Housing, & Local Government Committee to kill the bill during the last week of session.

The second construction defects bill (SB 24-112) was introduced by Senate Minority Leader Paul Lundeen (R) and co-sponsored by the full Republican caucus. It was intended as a messaging bill that went farther than SB 106. Among the proposed wish-list of reforms, the bill prohibited a construction professional from being held vicariously liable for the acts or omissions of a licensed design professional for any construction defects and raised the number of unit owners to approve an action against a builder from a majority to a two-thirds vote. A hearing for SB 112 was postponed for many weeks, and eventually the bill died in the Senate Local Government & Housing Committee in late April.

At the same time as the Senate bills were moving through the process, progressives in the House, at the request of the plaintiffs' bar, introduced their own construction defects bill (HB 24-1230) outlining new protections for real property owners. The bill extended the statute of repose on construction defects from six to ten years, added prejudgment interest for plaintiffs, and created a new cause of action to allow neighborhood associations to file defects lawsuits on behalf of single-family homes. Builders warned that these changes could cause more property insurers to leave the Colorado market. The House passed HB 1230 in early April, and the bill passed out of the Senate Local Government & Housing Committee in mid-April. The bill then sat on the Senate's second reading calendar as the session drew to a close, until it was laid over to May 9, essentially dying on the calendar.

The General Assembly's failure to pass construction defect litigation reform in 2024 means one more year in which builders do not add affordable condos to the market in Colorado, and would-be entry-level homeowners are shut out of the housing market.

Other Defeated Bills

Hall & Evans also lobbied against several failed bills that would have been problematic for the insurance industry. One such bill was HB 24-1270, Firearm Liability Insurance Requirement. This bill required firearm owners to maintain a liability insurance policy that covers losses or damages to a person who is injured as a result of any accidental or unintentional discharge of the firearm. The bill also required an insurer to offer firearm liability insurance coverage in a homeowners or renters insurance policy, and to include certain notifications related to this topic in their summary disclosure forms starting January 1, 2026.

Although many P&C carriers already offer firearm liability insurance, they were concerned that the new notification requirement was overly burdensome. The bill sponsors and proponents were resistant to changing the bill, but Governor Polis expressed concerns early on in the process. HB 1270 passed the House as well as the State Affairs Committee in the Senate, but given the Governor's opposition and the sponsors' unwillingness to make amendments, the bill was never taken up for second reading and died on the Senate calendar.

A particularly challenging piece of legislation was SCR 24-001, Child Sexual Abuse Accountability Amendment, introduced by Sens. Jessie Danielson (D) and Rhonda Fields (D), House Majority Leader Monica Duran (D), and Rep. Mike Weissman (D). The concurrent resolution would have submitted to Colorado voters a state constitutional amendment that would have allowed the General Assembly to pass retrospective laws that permit a victim of sexual abuse that occurred while the victim was a minor to bring a civil claim for the sexual abuse at any time.

While the testimony on this topic was emotionally wrenching, the concurrent resolution was problematic in multiple ways. In 2021, the General Assembly passed a bill to retrospectively eliminate the statute of limitations on claims of child sexual abuse. At that time, Hall & Evans vigorously argued that the Colorado Constitution prohibits the General Assembly from enacting a law that is retrospective in its operation. Last year, the liberal-leaning Colorado Supreme Court agreed, striking down the law as unconstitutional.[3] The sponsors of SCR 001 were therefore attempting to circumvent this problem by amending the State Constitution to authorize the General Assembly to pass a retrospective law that would allow victims of childhood sexual abuse to bring a civil claim regardless of when the sexual abuse occurred.

Importantly for the P&C insurance industry, these claims could have been brought against the individual perpetrator or against the institution that employed them, including churches, youth camps, or schools. Consequently, if those institutions could prove they were covered by P&C insurance at the time of the abuse, the insurance carriers could be held responsible for paying those civil claims, even though at the time of the abuse they had no awareness of the risk of these types of claims and operated under existing statutes of limitations.

Since the General Assembly was seeking to amend the State Constitution, a two-thirds vote was required to pass the concurrent resolution. In the Senate, 24 votes were needed to pass the concurrent resolution, while 12 votes were needed to defeat it. Presently, Democrats hold a 23-12 majority in the Senate. While all Senators empathized with the victims of these crimes, the Republican caucus understood the arguments and concerns of the P&C insurance industry and demonstrated their willingness to stand unified on a difficult issue. While, at one point, Sen. Mark Baisley (R) was listed as one of the co-sponsors of the concurrent resolution, ultimately, Senate Minority Leader Lundeen was able to keep his caucus together in voting against SCR 24-001 on the Senate floor. After being laid over thirteen times on second reading between early February and mid-April, SCR 001 failed on Senate third reading by a partisan vote of 23-12.

[3] *Aurora Pub. Sch. v. A.S.*, 2023 CO 39