

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 18-0283.01 Yelana Love x2295

HOUSE BILL 18-1030

HOUSE SPONSORSHIP

Everett, Buck, Humphrey, Leonard, Neville P., Ransom, Saine, Van Winkle, Williams D.,
Wist, Lewis

SENATE SPONSORSHIP

Neville T., Holbert, Marble

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROHIBITION OF DISCRIMINATION AGAINST**
102 **EMPLOYEES BASED ON LABOR UNION PARTICIPATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits an employer from requiring any person, as a condition of employment, to become or remain a member of a labor organization or to pay dues, fees, or other assessments to a labor organization or to a charity organization or other third party in lieu of the labor organization. Any agreement that violates these prohibitions or the rights of an employee is void.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 (c) PAY TO A CHARITY OR OTHER THIRD PARTY AN AMOUNT
2 EQUIVALENT TO, OR A PRO RATA PORTION OF, DUES, FEES, ASSESSMENTS,
3 OR OTHER CHARGES PROHIBITED IN SUBSECTION (1)(b) OF THIS SECTION IN
4 LIEU OF REQUIRING PAYMENT TO A LABOR ORGANIZATION.

5 **8-3.3-103. Void agreements.** A WRITTEN OR ORAL AGREEMENT,
6 UNDERSTANDING, OR PRACTICE, IMPLIED OR EXPRESSED, BETWEEN A
7 LABOR ORGANIZATION AND EMPLOYER THAT VIOLATES THE RIGHTS OF
8 EMPLOYEES AS GUARANTEED BY THIS ARTICLE 3.3 IS VOID.

9 **8-3.3-104. Penalty.** ANY PERSON WHO DIRECTLY OR INDIRECTLY
10 VIOLATES ANY PROVISION OF THIS ARTICLE 3.3 IS GUILTY OF A
11 MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF
12 NOT MORE THAN ONE THOUSAND DOLLARS, IMPRISONMENT IN THE COUNTY
13 JAIL FOR NOT MORE THAN NINETY DAYS, OR BOTH A FINE AND
14 IMPRISONMENT FOR EACH OFFENSE.

15 **8-3.3-105. Civil remedies.** (1) ANY PERSON INJURED AS A RESULT
16 OF A VIOLATION OR THREATENED VIOLATION OF THIS ARTICLE 3.3 MAY
17 BRING SUIT IN A COURT OF COMPETENT JURISDICTION FOR INJUNCTIVE
18 RELIEF, TO RECOVER ALL DAMAGES, INCLUDING COSTS AND REASONABLE
19 ATTORNEY FEES, RESULTING FROM THE VIOLATION OR THREATENED
20 VIOLATION, OR BOTH.

21 (2) THE REMEDIES PROVIDED BY THIS SECTION ARE INDEPENDENT
22 OF, AND IN ADDITION TO, ANY OTHER PENALTY OR REMEDY ESTABLISHED
23 BY THIS ARTICLE 3.3.

24 **8-3.3-106. Investigation of complaints - prosecution of**
25 **violations.** THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY IN EACH
26 JUDICIAL DISTRICT SHALL INVESTIGATE A COMPLAINT OF A VIOLATION OR
27 THREATENED VIOLATION OF THIS ARTICLE 3.3, PROSECUTE ANY PERSON

1 VIOLATING THIS ARTICLE 3.3, AND TAKE ACTIONS NECESSARY TO ENSURE
2 EFFECTIVE ENFORCEMENT OF THIS ARTICLE 3.3.

3 **8-3.3-107. Applicability of article - exceptions.** (1) THIS
4 ARTICLE 3.3 DOES NOT APPLY:

5 (a) TO EMPLOYERS AND EMPLOYEES COVERED BY THE FEDERAL
6 "RAILWAY LABOR ACT", 45 U.S.C. SEC. 151 ET SEQ., AS AMENDED;

7 (b) TO FEDERAL EMPLOYERS AND EMPLOYEES;

8 (c) TO EMPLOYERS AND EMPLOYEES IN EXCLUSIVE FEDERAL
9 ENCLAVES; OR

10 (d) WHERE IT WOULD CONFLICT WITH OR BE PREEMPTED BY
11 FEDERAL LAW.

12 **8-3.3-108. Severability.** IF ANY PROVISION OF THIS ARTICLE 3.3 OR
13 THE APPLICATION OF THIS ARTICLE 3.3 TO ANY PERSON OR CIRCUMSTANCE
14 IS HELD INVALID, THE OTHER PROVISIONS OR APPLICATIONS OF THIS
15 ARTICLE 3.3 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION
16 OR APPLICATION ARE SEVERABLE.

17 **SECTION 2.** In Colorado Revised Statutes, 8-3-108, **amend**
18 (1)(c) and (1)(e) as follows:

19 **8-3-108. What are unfair labor practices.** (1) It is an unfair
20 labor practice for an employer, individually or in concert with others, to:

21 (c) ~~(f)~~ Encourage or discourage membership in any labor
22 organization, employee agency, committee, association, or representation
23 plan by discrimination in regard to hiring, tenure, or other terms or
24 conditions of employment; ~~except that an employer shall not be~~
25 ~~prohibited from entering into an all-union agreement with the~~
26 ~~representatives of his employees in a collective bargaining unit if such~~
27 ~~all-union agreement is approved by the affirmative vote of at least a~~

1 majority of all the employees eligible to vote or three-quarters or more of
2 the employees who actually voted, whichever is greater, by secret ballot
3 in favor of such all-union agreement in an election provided for in this
4 paragraph (c) conducted under the supervision of the director. Where the
5 collective bargaining unit involved is currently recognized under sections
6 8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449;
7 61 Stat. 136), or where the collective bargaining unit involved is currently
8 recognized by reason of certification by the director or the national labor
9 relations board, or where such units were so recognized at the time of an
10 election provided for in this paragraph (c), there is and shall be deemed
11 to have been no need for a certification election as a precedent to an
12 election provided for in this paragraph (c) in such collective bargaining
13 unit on the issue of an all-union agreement. The employees in such a
14 recognized or certified unit within this state shall be the only employees
15 eligible to vote in an election provided for in this paragraph (c) held in
16 such unit.

17 (H) (A) Any agreement as defined in section 8-3-104 (1) between
18 an employer and a labor organization in existence on June 29, 1977,
19 which has not been voted upon by the employees covered by it may, by
20 written mutual agreement of such employer and labor organization, be
21 ratified and upon such ratification shall be filed with the director. Any
22 agreement as defined in section 8-3-104 (1) between an employer and a
23 labor organization in existence on June 29, 1977, which has not been
24 ratified and filed, as provided in this subparagraph (H), shall not be legal,
25 valid, or enforceable during the remaining term of that labor contract
26 unless and until either the employer, the labor organization, or at least
27 twenty percent of the employees covered by such agreement file a petition

1 upon forms provided by the division, demanding an election submitting
2 the question of the all-union agreement to the employees covered by such
3 agreement and said agreement is approved by the affirmative vote of at
4 least a majority of all the employees eligible to vote or three-quarters or
5 more of the employees who actually voted, whichever is greater, by secret
6 ballot in favor of such all-union agreement in an election provided for in
7 this paragraph (c) conducted under the supervision of the director.

8 (B) Upon filing of such instrument of ratification with the
9 director, the director shall certify that such agreement complies with the
10 provisions of section 8-3-104 (1) notwithstanding the absence of any
11 other election requirements of this article, and by virtue of such
12 ratification and certification, such agreement shall be deemed legal, valid,
13 and enforceable to the extent permitted under the provisions of this
14 article, subject to the provisions of sub-subparagraph (D) of this
15 subparagraph (H).

16 (C) Within two weeks after the certification by the director
17 provided for in sub-subparagraph (B) of this subparagraph (H), the
18 employer which is a party to such agreement shall post or give written
19 notice to all employees covered by such agreement on the date of
20 ratification of the fact that the agreement has been ratified and certified
21 pursuant to the provisions of this subparagraph (H) and of the right of
22 such employees to file a petition demanding an election as provided in
23 sub-subparagraph (D) of this subparagraph (H). Proof of giving of notice
24 shall be filed with the director within twenty days after the certification
25 by the director provided for in sub-subparagraph (B) of this subparagraph
26 (H).

27 (D) Within forty-five days after the certification by the director

1 provided for in sub-subparagraph (B) of this subparagraph (H) twenty
2 percent of the employees covered by such agreement may file a petition,
3 upon forms provided by the division, demanding an election submitting
4 the question of ratification of such agreement to the employees covered
5 by such agreement. If ratification of the agreement is approved by the
6 affirmative vote of at least a majority of all the employees eligible to vote
7 or three-quarters or more of the employees who actually voted, whichever
8 is greater, in said election, the agreement shall be conclusively deemed
9 ratified. Such election shall be held as promptly as possible following the
10 filing of the petition. In the event that a certified contract expires or is
11 terminated prior to the conducting of such an election, such certification
12 shall be applicable to any subsequent agreement between the same parties
13 until such election may be held.

14 (H) The director shall declare any such all-union agreement
15 terminated whenever:

16 (A) He finds that the labor organization involved unreasonably
17 has refused to receive as a member any employee of such employer, and
18 any person interested may come before the director, as provided in section
19 8-3-110, and ask the performance of this duty; or

20 (B) The employer or twenty percent of the employees covered by
21 such agreement file a petition with the director on forms provided by the
22 division seeking to revoke such all-union agreement and, in an election
23 conducted under the supervision of the director, there is not an
24 affirmative vote of at least a majority of all the employees eligible to vote
25 or three-quarters or more of the employees who actually voted, whichever
26 is greater, in such election by secret ballot in favor of such all-union
27 agreement. Such petition may only be filed within a time period between

1 ~~one hundred twenty and one hundred five days prior to the end of the~~
2 ~~collective bargaining agreement or prior to a triennial anniversary of the~~
3 ~~date of such agreement, and the division must complete said election~~
4 ~~within sixty days prior to the termination or triennial anniversary of said~~
5 ~~collective bargaining agreement. The director may conduct an election~~
6 ~~within a collective bargaining unit no more often than once during the~~
7 ~~term of any collective bargaining agreement or once every three years in~~
8 ~~the case of agreements for a period longer than three years.~~

9 ~~(IV) The director shall provide a means by which employees may~~
10 ~~submit confidential petitions for an election under this paragraph (c), a~~
11 ~~means for verifying the employment, status, and eligibility of petitioners,~~
12 ~~and a means for determining the sufficiency of such petitions with respect~~
13 ~~to the twenty percent signature requirement, all of which shall be~~
14 ~~accomplished without disclosing the identification of such petitioners,~~
15 ~~except as allowed under subparagraph (V) of this paragraph (c). This duty~~
16 ~~shall apply to petitions filed pursuant to subparagraph (H)(A), (H)(D), or~~
17 ~~(H)(B) of this paragraph (c).~~

18 ~~(V) No officer or employee of the division shall disclose the~~
19 ~~names of any signers to a petition or disclose how any person voted in an~~
20 ~~election to any person outside the division except pursuant to a court~~
21 ~~order or subpoena issued by a governmental authority or a court, and any~~
22 ~~such officer or employee who violates such nondisclosure provisions or~~
23 ~~who refuses to call an election pursuant to this paragraph (c) or prevents~~
24 ~~or conspires to prevent such call of an election commits a class 2~~
25 ~~misdemeanor and shall be punished as provided in section 18-1.3-501,~~
26 ~~C.R.S.~~

27 ~~(e) Enter into an all-union agreement; except in the manner~~

1 ~~provided in paragraph (c) of this subsection (1);~~

2 **SECTION 3.** In Colorado Revised Statutes, 8-3-109, **amend** (1);
3 and **repeal** (3) as follows:

4 **8-3-109. What are not unfair labor practices.** (1) It is not an
5 unfair labor practice for any employer to refuse to grant a closed shop or
6 all-union agreement. ~~or to accede to any proposal therefor as provided in~~
7 ~~this article.~~

8 (3) ~~It shall not be an unfair labor practice for an employer engaged~~
9 ~~primarily in the building and construction industry to enter into an~~
10 ~~all-union agreement, except an agreement providing for an agency shop~~
11 ~~or modified agency shop, with a labor organization, which agreement is~~
12 ~~limited in its coverage to employees who, upon their employment, will be~~
13 ~~engaged in the building and construction industry, if a copy of such~~
14 ~~agreement is filed with the director and certified by him as provided in~~
15 ~~section 8-3-108 (1)(c)(H)(B). Such agreement may be ratified as provided~~
16 ~~in section 8-3-108 (1)(c)(H)(C) or terminated by the director as provided~~
17 ~~in section 8-3-108 (1)(c)(H).~~

18 **SECTION 4. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly (August 8, 2018, if adjournment sine die is on May 9,
22 2018); except that, if a referendum petition is filed pursuant to section 1
23 (3) of article V of the state constitution against this act or an item, section,
24 or part of this act within such period, then the act, item, section, or part
25 will not take effect unless approved by the people at the general election
26 to be held in November 2018 and, in such case, will take effect on the
27 date of the official declaration of the vote thereon by the governor.

- 1 (2) This act applies to conduct occurring on or after the applicable
- 2 effective date of this act.