A BILL FOR AN ACT

Concerning the prohibition of discrimination against 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.
The bill creates civil and criminal penalties for violations and authorizes the attorney general and the district attorney in each judicial district to investigate alleged violations and take action against a person believed to be in violation. The bill states that all-union agreements are unfair labor practices.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add article 3.3 to title 8 as follows:

ARTICLE 3.3
Membership In Labor Organizations

8-3.3-101. Definitions. As used in this article 3.3, unless the context otherwise requires:

(1) "EMPLOYER" means a person, firm, association, corporation, public entity, public school, or public college, university, institution, or education agency that employs a person in this state.

(2) "LABOR ORGANIZATION" means any organization, agency, employee representation committee, or union that exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

8-3.3-102. Prohibited activities. (1) On and after the effective date of this section, an employer shall not require any person, as a condition of employment or the continuation of employment, to:

(a) Become or remain a member of a labor organization;

(b) Pay dues, fees, assessments, or other sums of money to a labor organization; or
(c) Pay to a charity or other third party an amount equivalent to, or a pro rata portion of, dues, fees, assessments, or other charges prohibited in subsection (1)(b) of this section in lieu of requiring payment to a labor organization.

8-3.3-103. Void agreements. A written or oral agreement, understanding, or practice, implied or expressed, between a labor organization and employer that violates the rights of employees as guaranteed by this article 3.3 is void.

8-3.3-104. Penalty. Any person who directly or indirectly violates any provision of this article 3.3 is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars, imprisonment in the county jail for not more than ninety days, or both a fine and imprisonment for each offense.

8-3.3-105. Civil remedies. (1) Any person injured as a result of a violation or threatened violation of this article 3.3 may bring suit in a court of competent jurisdiction for injunctive relief, to recover all damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation, or both.

(2) The remedies provided by this section are independent of, and in addition to, any other penalty or remedy established by this article 3.3.

8-3.3-106. Investigation of complaints - prosecution of violations. The attorney general or the district attorney in each judicial district shall investigate a complaint of a violation or threatened violation of this article 3.3, prosecute any person
VIOLATING THIS ARTICLE 3.3, AND TAKE ACTIONS NECESSARY TO ENSURE EFFECTIVE ENFORCEMENT OF THIS ARTICLE 3.3.

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

(a) TO EMPLOYERS AND EMPLOYEES COVERED BY THE FEDERAL "RAILWAY LABOR ACT", 45 U.S.C. SEC. 151 ET SEQ., AS AMENDED;
(b) TO FEDERAL EMPLOYERS AND EMPLOYEES;
(c) TO EMPLOYERS AND EMPLOYEES IN EXCLUSIVE FEDERAL ENCLAVES; or
(d) WHERE IT WOULD CONFLICT WITH OR BE PREEMPTED BY FEDERAL LAW.

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

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

8-3-108. What are unfair labor practices. (1) It is an unfair labor practice for an employer, individually or in concert with others, to:
(c) (¶) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in regard to hiring, tenure, or other terms or conditions of employment; except that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit if such all-union agreement is approved by the affirmative vote of at least a
majority of all the employees eligible to vote or three-quarters or more of
the employees who actually voted, whichever is greater, by secret ballot
in favor of such all-union agreement in an election provided for in this
paragraph (c) conducted under the supervision of the director. Where the
collective bargaining unit involved is currently recognized under sections
8 or 9 of the “National Labor Relations Act”, as amended, (49 Stat. 449;
61 Stat. 136), or where the collective bargaining unit involved is currently
recognized by reason of certification by the director or the national labor
relations board, or where such units were so recognized at the time of an
election provided for in this paragraph (c), there is and shall be deemed
to have been no need for a certification election as a precedent to an
election provided for in this paragraph (c) in such collective bargaining
unit on the issue of an all-union agreement. The employees in such a
recognized or certified unit within this state shall be the only employees
eligible to vote in an election provided for in this paragraph (c) held in
such unit.

(II) (A) Any agreement as defined in section 8-3-104 (1) between
an employer and a labor organization in existence on June 29, 1977,
which has not been voted upon by the employees covered by it may, by
written mutual agreement of such employer and labor organization, be
ratified and upon such ratification shall be filed with the director. Any
agreement as defined in section 8-3-104 (1) between an employer and a
labor organization in existence on June 29, 1977, which has not been
ratified and filed, as provided in this subparagraph (II), shall not be legal,
valid, or enforceable during the remaining term of that labor contract
unless and until either the employer, the labor organization, or at least
twenty percent of the employees covered by such agreement file a petition
upon forms provided by the division, demanding an election submitting
the question of the all-union agreement to the employees covered by such
agreement and said agreement is approved by the affirmative vote of at
least a majority of all the employees eligible to vote or three-quarters or
more of the employees who actually voted, whichever is greater, by secret
ballot in favor of such all-union agreement in an election provided for in
this paragraph (c) conducted under the supervision of the director.

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

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

(D) Within forty-five days after the certification by the director
provided for in sub-subparagraph (B) of this subparagraph (II) twenty percent of the employees covered by such agreement may file a petition; upon forms provided by the division, demanding an election submitting the question of ratification of such agreement to the employees covered by such agreement. If ratification of the agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in said election, the agreement shall be conclusively deemed ratified. Such election shall be held as promptly as possible following the filing of the petition. In the event that a certified contract expires or is terminated prior to the conducting of such an election, such certification shall be applicable to any subsequent agreement between the same parties until such election may be held:

(III) The director shall declare any such all-union agreement terminated whenever:

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

(B) The employer or twenty percent of the employees covered by such agreement file a petition with the director on forms provided by the division seeking to revoke such all-union agreement and, in an election conducted under the supervision of the director, there is not an affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, in such election by secret ballot in favor of such all-union agreement. Such petition may only be filed within a time period between
one hundred twenty and one hundred fifty days prior to the end of the collective bargaining agreement or prior to a triennial anniversary of the date of such agreement, and the division must complete said election within sixty days prior to the termination or triennial anniversary of said collective bargaining agreement. The director may conduct an election within a collective bargaining unit no more often than once during the term of any collective bargaining agreement or once every three years in the case of agreements for a period longer than three years.

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

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

(e) Enter into an all-union agreement; except in the manner
provided in paragraph (c) of this subsection (1);

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

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

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

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