

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0694.01 Kristen Forrestal x4217

HOUSE BILL 19-1101

HOUSE SPONSORSHIP

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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 union membership or payment of union dues as a condition of employment. The bill creates civil and criminal penalties for employer violations regarding union membership 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

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.

agreements are unfair labor practices.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 3.3 to title
3 8 as follows:

4 **ARTICLE 3.3**

5 **Membership in Labor Organizations**

6 **8-3.3-101. Definitions.** AS USED IN THIS ARTICLE 3.3, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "EMPLOYER" MEANS A PERSON, FIRM, ASSOCIATION,
9 CORPORATION, PUBLIC ENTITY, PUBLIC SCHOOL, OR PUBLIC COLLEGE,
10 UNIVERSITY, INSTITUTION, OR EDUCATION AGENCY THAT EMPLOYS ONE OR
11 MORE PEOPLE IN THIS STATE.

12 (2) "LABOR ORGANIZATION" MEANS ANY ORGANIZATION, AGENCY,
13 EMPLOYEE REPRESENTATION COMMITTEE, OR UNION THAT EXISTS FOR THE
14 PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS
15 CONCERNING WAGES, RATES OF PAY, HOURS OF WORK, OTHER CONDITIONS
16 OF EMPLOYMENT, OR OTHER FORMS OF COMPENSATION.

17 **8-3.3-102. Prohibited activities.** (1) ON AND AFTER THE
18 EFFECTIVE DATE OF THIS ARTICLE 3.3, AN EMPLOYER SHALL NOT REQUIRE
19 ANY PERSON, AS A CONDITION OF EMPLOYMENT OR THE CONTINUATION OF
20 EMPLOYMENT, TO:

21 (a) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION;

22 (b) PAY DUES, FEES, ASSESSMENTS, OR OTHER SUMS OF MONEY TO
23 A LABOR ORGANIZATION; OR

24 (c) PAY TO A CHARITY OR OTHER THIRD PARTY AN AMOUNT
25 EQUIVALENT TO, OR A PRO RATA PORTION OF, DUES, FEES, ASSESSMENTS,

1 OR OTHER CHARGES PROHIBITED IN SUBSECTION (1)(b) OF THIS SECTION IN
2 LIEU OF REQUIRING PAYMENT TO A LABOR ORGANIZATION.

3 **8-3.3-103. Void agreements.** A WRITTEN OR ORAL AGREEMENT,
4 UNDERSTANDING, OR PRACTICE, EXPRESSED OR IMPLIED, BETWEEN A
5 LABOR ORGANIZATION AND EMPLOYER THAT VIOLATES THE RIGHTS OF
6 EMPLOYEES AS GUARANTEED BY THIS ARTICLE 3.3 IS VOID.

7 **8-3.3-104. Penalty.** ANY PERSON WHO DIRECTLY OR INDIRECTLY
8 VIOLATES ANY PROVISION OF THIS ARTICLE 3.3 IS GUILTY OF A
9 MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF
10 NOT MORE THAN ONE THOUSAND DOLLARS, BY IMPRISONMENT IN THE
11 COUNTY JAIL FOR NOT MORE THAN NINETY DAYS, OR BY BOTH A FINE AND
12 IMPRISONMENT FOR EACH OFFENSE.

13 **8-3.3-105. Civil remedies.** (1) ANY PERSON INJURED AS A RESULT
14 OF A VIOLATION OR THREATENED VIOLATION OF THIS ARTICLE 3.3 MAY
15 BRING SUIT IN A COURT OF COMPETENT JURISDICTION FOR INJUNCTIVE
16 RELIEF; TO RECOVER ALL DAMAGES, INCLUDING COSTS AND REASONABLE
17 ATTORNEY FEES, RESULTING FROM THE VIOLATION OR THREATENED
18 VIOLATION; OR BOTH.

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

22 **8-3.3-106. Investigation of complaints - prosecution of**
23 **violations.** THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY IN EACH
24 JUDICIAL DISTRICT IN WHICH A VIOLATION IS ALLEGED SHALL INVESTIGATE
25 A COMPLAINT OF A VIOLATION OR THREATENED VIOLATION OF THIS
26 ARTICLE 3.3, PROSECUTE ANY PERSON VIOLATING THIS ARTICLE 3.3, AND
27 TAKE ACTIONS NECESSARY TO ENSURE EFFECTIVE ENFORCEMENT OF THIS

1 ARTICLE 3.3.

2 **8-3.3-107. Applicability of article - exceptions.** (1) THIS
3 ARTICLE 3.3 DOES NOT APPLY:

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

6 (b) TO FEDERAL EMPLOYERS AND EMPLOYEES;

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

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

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

13 **8-3-108. What are unfair labor practices.** (1) It is an unfair
14 labor practice for an employer, individually or in concert with others, to:

15 (c) ~~(f)~~ Encourage or discourage membership in any labor
16 organization, employee agency, committee, association, or representation
17 plan by discrimination in regard to hiring, tenure, or other terms or
18 conditions of employment; ~~except that an employer shall not be~~
19 ~~prohibited from entering into an all-union agreement with the~~
20 ~~representatives of his employees in a collective bargaining unit if such~~
21 ~~all-union agreement is approved by the affirmative vote of at least a~~
22 ~~majority of all the employees eligible to vote or three-quarters or more of~~
23 ~~the employees who actually voted, whichever is greater, by secret ballot~~
24 ~~in favor of such all-union agreement in an election provided for in this~~
25 ~~paragraph (c) conducted under the supervision of the director. Where the~~
26 ~~collective bargaining unit involved is currently recognized under sections~~
27 ~~8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449;~~

1 61 Stat. 136), or where the collective bargaining unit involved is currently
2 recognized by reason of certification by the director or the national labor
3 relations board, or where such units were so recognized at the time of an
4 election provided for in this paragraph (c), there is and shall be deemed
5 to have been no need for a certification election as a precedent to an
6 election provided for in this paragraph (c) in such collective bargaining
7 unit on the issue of an all-union agreement. The employees in such a
8 recognized or certified unit within this state shall be the only employees
9 eligible to vote in an election provided for in this paragraph (c) held in
10 such unit.

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

1 this paragraph (c) conducted under the supervision of the director.

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

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

21 ~~(D) Within forty-five days after the certification by the director~~
22 ~~provided for in sub-subparagraph (B) of this subparagraph (H) twenty~~
23 ~~percent of the employees covered by such agreement may file a petition,~~
24 ~~upon forms provided by the division, demanding an election submitting~~
25 ~~the question of ratification of such agreement to the employees covered~~
26 ~~by such agreement. If ratification of the agreement is approved by the~~
27 ~~affirmative vote of at least a majority of all the employees eligible to vote~~

1 ~~or three-quarters or more of the employees who actually voted, whichever~~
2 ~~is greater, in said election, the agreement shall be conclusively deemed~~
3 ~~ratified. Such election shall be held as promptly as possible following the~~
4 ~~filing of the petition. In the event that a certified contract expires or is~~
5 ~~terminated prior to the conducting of such an election, such certification~~
6 ~~shall be applicable to any subsequent agreement between the same parties~~
7 ~~until such election may be held.~~

8 ~~(H) The director shall declare any such all-union agreement~~
9 ~~terminated whenever:~~

10 ~~(A) He finds that the labor organization involved unreasonably~~
11 ~~has refused to receive as a member any employee of such employer, and~~
12 ~~any person interested may come before the director, as provided in section~~
13 ~~8-3-110, and ask the performance of this duty; or~~

14 ~~(B) The employer or twenty percent of the employees covered by~~
15 ~~such agreement file a petition with the director on forms provided by the~~
16 ~~division seeking to revoke such all-union agreement and, in an election~~
17 ~~conducted under the supervision of the director, there is not an~~
18 ~~affirmative vote of at least a majority of all the employees eligible to vote~~
19 ~~or three-quarters or more of the employees who actually voted, whichever~~
20 ~~is greater, in such election by secret ballot in favor of such all-union~~
21 ~~agreement. Such petition may only be filed within a time period between~~
22 ~~one hundred twenty and one hundred five days prior to the end of the~~
23 ~~collective bargaining agreement or prior to a triennial anniversary of the~~
24 ~~date of such agreement, and the division must complete said election~~
25 ~~within sixty days prior to the termination or triennial anniversary of said~~
26 ~~collective bargaining agreement. The director may conduct an election~~
27 ~~within a collective bargaining unit no more often than once during the~~

1 term of any collective bargaining agreement or once every three years in
2 the case of agreements for a period longer than three years.

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

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

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

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

25 **8-3-109. What are not unfair labor practices.** (1) It is not an
26 unfair labor practice for any employer to refuse to grant a closed shop or
27 all-union agreement. ~~or to accede to any proposal therefor as provided in~~

1 ~~this article.~~

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

12 **SECTION 4. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2020 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.