

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0501.01 Kristen Forrestal x4217

SENATE BILL 12-100

SENATE SPONSORSHIP

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House 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://www.leg.state.co.us/billsummaries>.)

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

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

1 EQUIVALENT TO, OR A PRO RATA PORTION OF, DUES, FEES, ASSESSMENTS,
2 OR OTHER CHARGES PROHIBITED IN PARAGRAPH (b) OF THIS SUBSECTION
3 (1), IN LIEU OF REQUIRING PAYMENT TO A LABOR ORGANIZATION.

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

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

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

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.

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

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

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

5 (b) TO FEDERAL EMPLOYERS AND EMPLOYEES;

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

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

10 **8-3.3-108. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
11 THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE IS
12 HELD INVALID, THE OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE
13 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
14 APPLICATION ARE SEVERABLE.

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

17 **8-3-108. What are unfair labor practices.** (1) It is an unfair
18 labor practice for an employer, individually or in concert with others, to:

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

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

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

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

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

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

25 ~~(D) Within forty-five days after the certification by the director~~
26 ~~provided for in sub-subparagraph (B) of this subparagraph (H) twenty~~
27 ~~percent of the employees covered by such agreement may file a petition,~~

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

12 (HH) The director shall declare any such all-union agreement
13 terminated whenever:

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

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

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

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

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

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

27 **SECTION 3.** In Colorado Revised Statutes, 8-3-109, **amend** (1);

1 and **repeal** (3) as follows:

2 **8-3-109. What are not unfair labor practices.** (1) It is not an
3 unfair labor practice for any employer to refuse to grant a closed shop or
4 all-union agreement. ~~or to accede to any proposal therefor as provided in~~
5 ~~this article.~~

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

16 **SECTION 4. Effective date - applicability.** This act takes effect
17 July 1, 2012, and applies to any employment contract entered into,
18 renewed, or extended on or after said date.

19 **SECTION 5. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.