

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0005.01 Yelana Love x2295

SENATE BILL 16-070

SENATE SPONSORSHIP

Neville T., Cadman, Cooke, Crowder, Grantham, Hill, Holbert, Lundberg, Marble, Scheffel,
Tate, Woods

HOUSE SPONSORSHIP

Everett, Brown, Buck, Humphrey, Neville P., Saine

Senate Committees

Business, Labor, & Technology

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 rights of an employee is void.

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.*

SENATE
Amended 2nd Reading
February 19, 2016

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 PARAGRAPH (b) OF THIS SUBSECTION
4 (1) IN 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 IS VOID.

9 **8-3.3-104. Prohibited activities.** (1) ON AND AFTER THE
10 EFFECTIVE DATE OF THIS SECTION, AN EMPLOYER SHALL NOT
11 DISCRIMINATE AGAINST AN EMPLOYEE WHILE CARDS ARE BEING
12 CIRCULATED, DURING COLLECTIVE BARGAINING, OR WHILE A LABOR
13 ELECTION IS PENDING, BY:

- 14 (a) APPLYING PHYSICAL RESTRAINT;
- 15 (b) PREVENTING BATHROOM USE;
- 16 (c) ELIMINATING LUNCH BREAKS;
- 17 (d) REDUCING PAY; OR
- 18 (e) DEMOTING THE EMPLOYEE.

19 **8-3.3-105. Reimbursement of dues.** UPON A LABOR
20 ORGANIZATION MEMBER'S RESIGNATION FROM LABOR ORGANIZATION
21 MEMBERSHIP, THE LABOR ORGANIZATION SHALL REFUND THE MEMBER HIS
22 OR HER LABOR ORGANIZATION DUES ON A PRO RATA BASIS WITHIN THIRTY
23 DAYS OF THE MEMBER'S RESIGNATION.

24 **8-3.3-106. Restriction on use of labor membership dues.** A
25 LABOR ORGANIZATION SHALL NOT USE AN EMPLOYEE'S MEMBERSHIP DUES
26 FOR POLITICAL CONTRIBUTIONS WITHOUT THE EXPRESS CONSENT OF THE
27 EMPLOYEE. THIS CONSENT MUST BE IN AN OPT-IN FORM.

1 **8-3.3-107. Penalty.** ANY PERSON WHO DIRECTLY OR INDIRECTLY
2 VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR
3 AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE
4 THAN ONE THOUSAND DOLLARS, IMPRISONMENT IN THE COUNTY JAIL FOR
5 NOT MORE THAN NINETY DAYS, OR BOTH A FINE AND IMPRISONMENT FOR
6 EACH OFFENSE.

7 **8-3.3-108. Civil remedies.** (1) ANY PERSON INJURED AS A RESULT
8 OF A VIOLATION OR THREATENED VIOLATION OF THIS ARTICLE MAY BRING
9 SUIT IN A COURT OF COMPETENT JURISDICTION TO RECOVER ALL DAMAGES,
10 INCLUDING COSTS AND REASONABLE ATTORNEY FEES, RESULTING FROM
11 THE VIOLATION OR THREATENED VIOLATION.

12 (2) THE REMEDIES PROVIDED BY THIS SECTION ARE INDEPENDENT
13 OF, AND IN ADDITION TO, ANY OTHER PENALTY OR REMEDY ESTABLISHED
14 BY THIS ARTICLE.

15 **8-3.3-109. Investigation of complaints - prosecution of**
16 **violations.** THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY IN EACH
17 JUDICIAL DISTRICT SHALL INVESTIGATE A COMPLAINT OF A VIOLATION OR
18 THREATENED VIOLATION OF THIS ARTICLE, PROSECUTE ANY PERSON
19 VIOLATING THIS ARTICLE, AND TAKE ACTIONS NECESSARY TO ENSURE
20 EFFECTIVE ENFORCEMENT OF THIS ARTICLE.

21 **8-3.3-110. Applicability of article - exceptions.** (1) THIS
22 ARTICLE DOES NOT APPLY:

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

25 (b) TO FEDERAL EMPLOYERS AND EMPLOYEES;

26 (c) TO EMPLOYERS AND EMPLOYEES IN EXCLUSIVE FEDERAL
27 ENCLAVES; OR

1 (d) WHERE IT WOULD CONFLICT WITH OR BE PREEMPTED BY
2 FEDERAL LAW.

3 **8-3.3-111. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
4 THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE IS
5 HELD INVALID, THE OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE
6 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
7 APPLICATION ARE SEVERABLE.

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

10 **8-3-108. What are unfair labor practices.** (1) It is an unfair
11 labor practice for an employer, individually or in concert with others, to:

12 (c) ~~(f)~~ Encourage or discourage membership in any labor
13 organization, employee agency, committee, association, or representation
14 plan by discrimination in regard to hiring, tenure, or other terms or
15 conditions of employment; ~~except that an employer shall not be~~
16 ~~prohibited from entering into an all-union agreement with the~~
17 ~~representatives of his employees in a collective bargaining unit if such~~
18 ~~all-union agreement is approved by the affirmative vote of at least a~~
19 ~~majority of all the employees eligible to vote or three-quarters or more of~~
20 ~~the employees who actually voted, whichever is greater, by secret ballot~~
21 ~~in favor of such all-union agreement in an election provided for in this~~
22 ~~paragraph (c) conducted under the supervision of the director. Where the~~
23 ~~collective bargaining unit involved is currently recognized under sections~~
24 ~~8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449;~~
25 ~~61 Stat. 136), or where the collective bargaining unit involved is currently~~
26 ~~recognized by reason of certification by the director or the national labor~~
27 ~~relations board, or where such units were so recognized at the time of an~~

1 election provided for in this paragraph (c), there is and shall be deemed
2 to have been no need for a certification election as a precedent to an
3 election provided for in this paragraph (c) in such collective bargaining
4 unit on the issue of an all-union agreement. The employees in such a
5 recognized or certified unit within this state shall be the only employees
6 eligible to vote in an election provided for in this paragraph (c) held in
7 such unit.

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

26 (B) Upon filing of such instrument of ratification with the
27 director, the director shall certify that such agreement complies with the

1 provisions of section 8-3-104 (1) notwithstanding the absence of any
2 other election requirements of this article, and by virtue of such
3 ratification and certification, such agreement shall be deemed legal, valid,
4 and enforceable to the extent permitted under the provisions of this
5 article, subject to the provisions of sub-subparagraph (D) of this
6 subparagraph (H):

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

18 (D) Within forty-five days after the certification by the director
19 provided for in sub-subparagraph (B) of this subparagraph (H) twenty
20 percent of the employees covered by such agreement may file a petition,
21 upon forms provided by the division, demanding an election submitting
22 the question of ratification of such agreement to the employees covered
23 by such agreement. If ratification of the agreement is approved by the
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 said election, the agreement shall be conclusively deemed
27 ratified. Such election shall be held as promptly as possible following the

1 filing of the petition. In the event that a certified contract expires or is
2 terminated prior to the conducting of such an election, such certification
3 shall be applicable to any subsequent agreement between the same parties
4 until such election may be held.

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

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

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

27 (IV) ~~The director shall provide a means by which employees may~~

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

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

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

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

22 **8-3-109. What are not unfair labor practices.** (1) It is not an
23 unfair labor practice for any employer to refuse to grant a closed shop or
24 all-union agreement. or to accede to any proposal therefor as provided in
25 this article.

26 (3) It shall not be an unfair labor practice for an employer engaged
27 primarily in the building and construction industry to enter into an

1 ~~all-union agreement, except an agreement providing for an agency shop~~
2 ~~or modified agency shop, with a labor organization, which agreement is~~
3 ~~limited in its coverage to employees who, upon their employment, will be~~
4 ~~engaged in the building and construction industry, if a copy of such~~
5 ~~agreement is filed with the director and certified by him as provided in~~
6 ~~section 8-3-108 (1) (c) (II) (B). Such agreement may be ratified as~~
7 ~~provided in section 8-3-108 (1) (c) (II) (C) or terminated by the director~~
8 ~~as provided in section 8-3-108 (1) (c) (III).~~

9 **SECTION 4. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2016 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.