

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted 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 3rd Reading
February 22, 2016

SENATE
Amended 2nd Reading
February 19, 2016

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.

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, 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 A
11 PERSON 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 SECTION, AN EMPLOYER SHALL NOT REQUIRE ANY
19 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

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
10 **8-3.3-104. Reimbursement of dues.** UPON A LABOR
11 ORGANIZATION MEMBER'S RESIGNATION FROM LABOR ORGANIZATION
12 MEMBERSHIP, THE LABOR ORGANIZATION SHALL REFUND THE MEMBER HIS
13 OR HER LABOR ORGANIZATION DUES ON A PRO RATA BASIS WITHIN THIRTY
14 DAYS OF THE MEMBER'S RESIGNATION.

15 **8-3.3-105. Restriction on use of labor membership dues.** A
16 LABOR ORGANIZATION SHALL NOT USE AN EMPLOYEE'S MEMBERSHIP DUES
17 FOR POLITICAL CONTRIBUTIONS WITHOUT THE EXPRESS CONSENT OF THE
18 EMPLOYEE. THIS CONSENT MUST BE IN AN OPT-IN FORM.

19 **8-3.3-106. Penalty.** ANY PERSON WHO DIRECTLY OR INDIRECTLY
20 VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR
21 AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF NOT MORE
22 THAN ONE THOUSAND DOLLARS, IMPRISONMENT IN THE COUNTY JAIL FOR
23 NOT MORE THAN NINETY DAYS, OR BOTH A FINE AND IMPRISONMENT FOR
24 EACH OFFENSE.

25 **8-3.3-107. Civil remedies.** (1) ANY PERSON INJURED AS A RESULT
26 OF A VIOLATION OR THREATENED VIOLATION OF THIS ARTICLE MAY BRING
27 SUIT IN A COURT OF COMPETENT JURISDICTION TO RECOVER ALL DAMAGES,

1 INCLUDING COSTS AND REASONABLE ATTORNEY FEES, RESULTING FROM
2 THE VIOLATION OR THREATENED VIOLATION.

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

6 **8-3.3-108. Investigation of complaints - prosecution of**
7 **violations.** THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY IN EACH
8 JUDICIAL DISTRICT SHALL INVESTIGATE A COMPLAINT OF A VIOLATION OR
9 THREATENED VIOLATION OF THIS ARTICLE, PROSECUTE ANY PERSON
10 VIOLATING THIS ARTICLE, AND TAKE ACTIONS NECESSARY TO ENSURE
11 EFFECTIVE ENFORCEMENT OF THIS ARTICLE.

12 **8-3.3-109. Applicability of article - exceptions.** (1) THIS
13 ARTICLE DOES NOT APPLY:

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

16 (b) TO FEDERAL EMPLOYERS AND EMPLOYEES;

17 (c) TO EMPLOYERS AND EMPLOYEES IN EXCLUSIVE FEDERAL
18 ENCLAVES; OR

19 (d) WHERE IT WOULD CONFLICT WITH OR BE PREEMPTED BY
20 FEDERAL LAW.

21 **8-3.3-110. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
22 THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE IS
23 HELD INVALID, THE OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE
24 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR
25 APPLICATION ARE SEVERABLE.

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

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

3 (c) ~~(F)~~ Encourage or discourage membership in any labor
4 organization, employee agency, committee, association, or representation
5 plan by discrimination in regard to hiring, tenure, or other terms or
6 conditions of employment; ~~except that an employer shall not be~~
7 ~~prohibited from entering into an all-union agreement with the~~
8 ~~representatives of his employees in a collective bargaining unit if such~~
9 ~~all-union agreement is approved by the affirmative vote of at least a~~
10 ~~majority of all the employees eligible to vote or three-quarters or more of~~
11 ~~the employees who actually voted, whichever is greater, by secret ballot~~
12 ~~in favor of such all-union agreement in an election provided for in this~~
13 ~~paragraph (c) conducted under the supervision of the director. Where the~~
14 ~~collective bargaining unit involved is currently recognized under sections~~
15 ~~8 or 9 of the "National Labor Relations Act", as amended, (49 Stat. 449;~~
16 ~~61 Stat. 136), or where the collective bargaining unit involved is currently~~
17 ~~recognized by reason of certification by the director or the national labor~~
18 ~~relations board, or where such units were so recognized at the time of an~~
19 ~~election provided for in this paragraph (c), there is and shall be deemed~~
20 ~~to have been no need for a certification election as a precedent to an~~
21 ~~election provided for in this paragraph (c) in such collective bargaining~~
22 ~~unit on the issue of an all-union agreement. The employees in such a~~
23 ~~recognized or certified unit within this state shall be the only employees~~
24 ~~eligible to vote in an election provided for in this paragraph (c) held in~~
25 ~~such unit.~~

26 ~~(H) (A) Any agreement as defined in section 8-3-104 (1) between~~
27 ~~an employer and a labor organization in existence on June 29, 1977,~~

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

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

25 (C) Within two weeks after the certification by the director
26 provided for in sub-subparagraph (B) of this subparagraph (H), the
27 employer which is a party to such agreement shall post or give written

1 notice to all employees covered by such agreement on the date of
2 ratification of the fact that the agreement has been ratified and certified
3 pursuant to the provisions of this subparagraph (H) and of the right of
4 such employees to file a petition demanding an election as provided in
5 sub-subparagraph (D) of this subparagraph (H). Proof of giving of notice
6 shall be filed with the director within twenty days after the certification
7 by the director provided for in sub-subparagraph (B) of this subparagraph
8 (H):

9 (D) Within forty-five days after the certification by the director
10 provided for in sub-subparagraph (B) of this subparagraph (H) twenty
11 percent of the employees covered by such agreement may file a petition,
12 upon forms provided by the division, demanding an election submitting
13 the question of ratification of such agreement to the employees covered
14 by such agreement. If ratification of the agreement is approved by the
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 said election, the agreement shall be conclusively deemed
18 ratified. Such election shall be held as promptly as possible following the
19 filing of the petition. In the event that a certified contract expires or is
20 terminated prior to the conducting of such an election, such certification
21 shall be applicable to any subsequent agreement between the same parties
22 until such election may be held:

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

25 (A) He finds that the labor organization involved unreasonably
26 has refused to receive as a member any employee of such employer, and
27 any person interested may come before the director, as provided in section

1 ~~8-3-110, and ask the performance of this duty; or~~

2 ~~(B) The employer or twenty percent of the employees covered by~~
3 ~~such agreement file a petition with the director on forms provided by the~~
4 ~~division seeking to revoke such all-union agreement and, in an election~~
5 ~~conducted under the supervision of the director, there is not an~~
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 such election by secret ballot in favor of such all-union~~
9 ~~agreement. Such petition may only be filed within a time period between~~
10 ~~one hundred twenty and one hundred five days prior to the end of the~~
11 ~~collective bargaining agreement or prior to a triennial anniversary of the~~
12 ~~date of such agreement, and the division must complete said election~~
13 ~~within sixty days prior to the termination or triennial anniversary of said~~
14 ~~collective bargaining agreement. The director may conduct an election~~
15 ~~within a collective bargaining unit no more often than once during the~~
16 ~~term of any collective bargaining agreement or once every three years in~~
17 ~~the case of agreements for a period longer than three years.~~

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

27 ~~(V) No officer or employee of the division shall disclose the~~

1 names of any signers to a petition or disclose how any person voted in an
2 election to any person outside the division except pursuant to a court
3 order or subpoena issued by a governmental authority or a court, and any
4 such officer or employee who violates such nondisclosure provisions or
5 who refuses to call an election pursuant to this paragraph (c) or prevents
6 or conspires to prevent such call of an election commits a class 2
7 misdemeanor and shall be punished as provided in section 18-1.3-501,
8 C.R.S.

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

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

13 **8-3-109. What are not unfair labor practices.** (1) It is not an
14 unfair labor practice for any employer to refuse to grant a closed shop or
15 all-union agreement. ~~or to accede to any proposal therefor as provided in~~
16 ~~this article.~~

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

27 **SECTION 4. Act subject to petition - effective date.** This act

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