

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

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

LLS NO. 01-0593.01 Kristen Forresteral

HOUSE BILL 01-1301

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING THE PROHIBITION OF DISCRIMINATION AGAINST**
102 **EMPLOYEES BASED UPON LABOR UNION PARTICIPATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

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 such an organization. Prohibits an employer from discriminating against an employee because of the failure of the employee to become or remain a member of a labor organization or to pay dues, fees, or other assessments to such an organization.

States that all-union agreements and agreements ratified but not voted on by the employees are unfair labor practices.

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.

HOUSE
3rd Reading Unamended
May 7, 2001

HOUSE
2nd Reading Unamended
May 4, 2001

Establishes civil and criminal penalties for violations.

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

2 **SECTION 1.** Title 8, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 3.5**

5 **Membership in Labor Organizations**

6 **8-3.5-101. Legislative declaration.** IT IS HEREBY DECLARED TO
7 BE THE PUBLIC POLICY OF THE STATE OF COLORADO THAT ALL PERSONS
8 SHALL HAVE, AND SHALL BE PROTECTED IN THE EXERCISE OF, THE RIGHT TO
9 FREELY FORM, JOIN, OR ASSIST LABOR ORGANIZATIONS OR TO REFRAIN
10 FROM SUCH ACTIVITY WITHOUT FEAR OF PENALTY OR REPRISAL.

11 **8-3.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

13 (1) "EMPLOYER" MEANS ANY INDIVIDUAL, CORPORATION,
14 ASSOCIATION, ORGANIZATION, ENTITY, OR STATE OR LOCAL GOVERNMENT
15 THAT EMPLOYS ONE OR MORE PERSONS IN ANY CAPACITY, INCLUDING ANY
16 PERSON EMPLOYED TO PERFORM AGRICULTURAL LABOR. "EMPLOYER"
17 ALSO MEANS ANY INDIVIDUAL ACTING AS AN AGENT OF AN EMPLOYER,
18 DIRECTLY OR INDIRECTLY.

19 (2) "LABOR ORGANIZATION" OR "LABOR UNION" MEANS ANY
20 ORGANIZATION, AGENCY, EMPLOYEE REPRESENTATION COMMITTEE, OR
21 PLAN THAT EXISTS FOR THE PURPOSE, WHOLLY OR IN PART, OF DEALING
22 WITH EMPLOYERS CONCERNING GRIEVANCES, LABOR DISPUTES, WAGES,
23 RATES OF PAY, HOURS OF WORK, OR OTHER CONDITIONS OF EMPLOYMENT.

24 **8-3.5-103. Prohibited activities.** ON AND AFTER JULY 1, 2001, NO
25 EMPLOYER SHALL REQUIRE ANY PERSON, AS A CONDITION OF EMPLOYMENT

1 OR OF THE CONTINUATION OF EMPLOYMENT, TO BECOME OR REMAIN A
2 MEMBER OF ANY LABOR ORGANIZATION OR TO PAY ANY DUES, FEES,
3 ASSESSMENTS, OR OTHER SUMS OF MONEY TO A LABOR ORGANIZATION. ON
4 AND AFTER JULY 1, 2001, NO EMPLOYER SHALL DISCRIMINATE AGAINST
5 ANY EMPLOYEE BECAUSE THE EMPLOYEE HAS FAILED OR REFUSED TO
6 BECOME A MEMBER OF ANY LABOR ORGANIZATION OR HAS FAILED OR
7 REFUSED TO PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER SUMS OF
8 MONEY TO A LABOR ORGANIZATION.

9 **8-3.5-104. Void agreements.** ANY WRITTEN OR ORAL
10 AGREEMENT, UNDERSTANDING, OR PRACTICE BETWEEN AN EMPLOYER AND
11 A LABOR ORGANIZATION THAT IS IN VIOLATION OF THE PROVISIONS OF THIS
12 ARTICLE IS VOID.

13 **8-3.5-105. Penalty.** ANY PERSON, EMPLOYER, LABOR
14 ORGANIZATION, OR AGENT OR REPRESENTATIVE OF AN EMPLOYER OR
15 LABOR ORGANIZATION WHO DIRECTLY OR INDIRECTLY IMPOSES UPON ANY
16 PERSON ANY REQUIREMENT PROHIBITED BY THIS ARTICLE IS GUILTY OF A
17 MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY
18 A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, IMPRISONMENT IN
19 THE COUNTY JAIL FOR NOT MORE THAN NINETY DAYS, OR BOTH SUCH FINE
20 AND IMPRISONMENT FOR EACH OFFENSE.

21 **8-3.5-106. Civil remedies.** (1) ANY PERSON INJURED AS A RESULT
22 OF ANY VIOLATION OF THE PROVISIONS OF THIS ARTICLE OR WHO WOULD BE
23 INJURED AS A RESULT OF A THREATENED VIOLATION MAY BRING SUIT IN A
24 COURT OF COMPETENT JURISDICTION TO OBTAIN INJUNCTIVE RELIEF
25 AGAINST THE VIOLATOR OR PERSON THREATENING VIOLATION. A PERSON
26 INJURED AS A RESULT OF A VIOLATION OF THIS ARTICLE MAY BRING SUIT IN
27 A COURT OF COMPETENT JURISDICTION TO RECOVER THE DAMAGES

1 RESULTING FROM SUCH VIOLATION. IN ANY ACTION OR PROCEEDING TO
2 ENFORCE A PROVISION OF THIS ARTICLE, THE COURT SHALL AWARD TO ANY
3 PERSON INJURED OR THREATENED WITH INJURY BY A VIOLATION OF THIS
4 ARTICLE REASONABLE ATTORNEY FEES IN ADDITION TO COURT COSTS.

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

8 **8-3.5-107. Investigation of complaints - prosecution of**
9 **violations.** THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY IN
10 EACH JUDICIAL DISTRICT SHALL INVESTIGATE ANY COMPLAINTS OF
11 VIOLATION OF THIS ARTICLE, PROSECUTE ANY PERSON VIOLATING ANY OF
12 THE PROVISIONS OF THIS ARTICLE, AND TAKE ACTIONS NECESSARY TO
13 ENSURE EFFECTIVE ENFORCEMENT OF THIS ARTICLE.

14 **8-3.5-108. Applicability of article - new contracts - extension or**
15 **renewal of existing contracts.** THE PROVISIONS OF THIS ARTICLE SHALL
16 APPLY TO ANY CONTRACT OR AGREEMENT ENTERED INTO ON OR AFTER
17 JULY 1, 2001, AND TO ANY EXTENSION OR RENEWAL OF A CONTRACT OR
18 AGREEMENT EXISTING ON SUCH DATE OR ENTERED INTO ON OR AFTER SUCH
19 DATE.

20 **8-3.5-109. Severability.** IF ANY PROVISION OF THIS ARTICLE OR
21 THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE IS
22 HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR
23 APPLICATIONS OF THIS ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE
24 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF
25 THIS ARTICLE ARE DECLARED TO BE SEVERABLE.

26 **SECTION 2.** 8-3-108 (1) (c) and (1) (e), Colorado Revised
27 Statutes, are amended to read:

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 prohibited~~
7 ~~from entering into an all-union agreement with the representatives of his~~
8 ~~employees in a collective bargaining unit if such all-union agreement is~~
9 ~~approved by the affirmative vote of at least a majority of all the employees~~
10 ~~eligible to vote or three-quarters or more of the employees who actually~~
11 ~~voted, whichever is greater, by secret ballot in favor of such all-union~~
12 ~~agreement in an election provided for in this paragraph (c) conducted~~
13 ~~under the supervision of the director. Where the collective bargaining unit~~
14 ~~involved is currently recognized under sections 8 or 9 of the "National~~
15 ~~Labor Relations Act", as amended, (49 Stat. 449; 61 Stat. 136), or where~~
16 ~~the collective bargaining unit involved is currently recognized by reason~~
17 ~~of certification by the director or the national labor relations board, or~~
18 ~~where such units were so recognized at the time of an election provided~~
19 ~~for in this paragraph (c), there is and shall be deemed to have been no~~
20 ~~need for a certification election as a precedent to an election provided for~~
21 ~~in this paragraph (c) in such collective bargaining unit on the issue of an~~
22 ~~all-union agreement. The employees in such a recognized or certified unit~~
23 ~~within this state shall be the only employees eligible to vote in an election~~
24 ~~provided for in this paragraph (c) held in such unit.~~

25 ~~(H) (A) Any agreement as defined in section 8-3-104 (1) between~~
26 ~~an employer and a labor organization in existence on June 29, 1977,~~
27 ~~which has not been voted upon by the employees covered by it may, by~~

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

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

23 (C) ~~Within two weeks after the certification by the director~~
24 ~~provided for in sub-subparagraph (B) of this subparagraph (H), the~~
25 ~~employer which is a party to such agreement shall post or give written~~
26 ~~notice to all employees covered by such agreement on the date of~~
27 ~~ratification of the fact that the agreement has been ratified and certified~~

1 pursuant to the provisions of this subparagraph (H) and of the right of such
2 employees to file a petition demanding an election as provided in
3 sub-subparagraph (D) of this subparagraph (H). Proof of giving of notice
4 shall be filed with the director within twenty days after the certification
5 by the director provided for in sub-subparagraph (B) of this subparagraph
6 (H):

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

21 (HH) ~~The director shall declare any such all-union agreement~~
22 ~~terminated whenever:~~

23 (A) ~~He finds that the labor organization involved unreasonably has~~
24 ~~refused to receive as a member any employee of such employer, and any~~
25 ~~person interested may come before the director, as provided in section~~
26 ~~8-3-110, and ask the performance of this duty; or~~

27 (B) ~~The employer or twenty percent of the employees covered by~~

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

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

25 (V) No officer or employee of the division shall disclose the
26 names of any signers to a petition or disclose how any person voted in an
27 election to any person outside the division except pursuant to a court order

1 ~~or subpoena issued by a governmental authority or a court, and any such~~
2 ~~officer or employee who violates such nondisclosure provisions or who~~
3 ~~refuses to call an election pursuant to this paragraph (c) or prevents or~~
4 ~~conspires to prevent such call of an election commits a class 2~~
5 ~~misdemeanor and shall be punished as provided in section 18-1-106,~~
6 ~~C.R.S.~~

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

9 **SECTION 3.** 8-3-109 (1) and (3), Colorado Revised Statutes, are
10 amended to read:

11 **8-3-109. What are not unfair labor practices.** (1) It is not an
12 unfair labor practice for any employer to refuse to grant a closed shop or
13 all-union agreement. ~~or to accede to any proposal therefor as provided in~~
14 ~~this article.~~

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

25 **SECTION 4. Effective date - applicability.** This act shall take
26 effect July 1, 2001, and shall apply to contracts or agreements entered
27 into, extended, or renewed on or after said date.

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