

118TH CONGRESS
1ST SESSION

S. _____

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from heat-related injuries and illnesses.

IN THE SENATE OF THE UNITED STATES

Mr. BROWN (for himself, Mr. PADILLA, Ms. CORTEZ MASTO, Mr. SANDERS, Mr. BLUMENTHAL, Mr. BOOKER, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HIRONO, Mr. LUJÁN, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mrs. MURRAY, Mr. REED, Mr. SCHATZ, Mr. VAN HOLLEN, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To direct the Secretary of Labor to promulgate an occupational safety and health standard to protect workers from heat-related injuries and illnesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Asunción Valdivia
5 Heat Illness, Injury, and Fatality Prevention Act of
6 2023”.

7 **SEC. 2. EMPLOYER DUTIES.**

8 Each employer shall—

1 (1) furnish employment and a place of employ-
2 ment free from conditions that may reasonably be
3 anticipated to cause death or serious physical harm
4 from heat stress; and

5 (2) comply with standards, regulations, rules,
6 and orders promulgated under this Act.

7 **SEC. 3. WORKER HEAT PROTECTION STANDARDS.**

8 (a) DESIGN OF STANDARDS.—

9 (1) IN GENERAL.—The Secretary shall promul-
10 gate a worker heat protection standard that, in ac-
11 cordance with the best available evidence, establishes
12 the maximum protective program of measures an
13 employer shall implement to regulate employees' ex-
14 posure to heat stress and prevent heat-related illness
15 and injury that attains the highest degree of health
16 and safety protection to the extent feasible.

17 (2) CONSIDERATIONS.—

18 (A) DEMONSTRABLY ACHIEVABLE MEAS-
19 URES.—The Secretary may presume that any
20 requirement substantially equivalent to a re-
21 quirement adopted by a State plan approved by
22 the Occupational Safety and Health Adminis-
23 tration pursuant to section 18(c) of the Occupa-
24 tional Safety and Health Act of 1970 (29

1 U.S.C. 667(c)) and that has been in effect for
2 at least 1 year is feasible.

3 (B) PRIORITIZING WORKER PROTEC-
4 TION.—In weighing any considerations during
5 rulemaking, the Secretary shall place pre-
6 eminent value on assuring employees a safe and
7 healthful working environment.

8 (C) AVAILABLE EXPERTISE.—If the Sec-
9 retary adopts any finding or recommendation
10 by the Institute, the American Conference of
11 Governmental Industrial Hygienists, or the Na-
12 tional Academies of Sciences, Engineering, and
13 Medicine relevant to heat stress in a rule-
14 making pursuant to this Act, such finding or
15 recommendation shall be considered the best
16 available evidence.

17 (D) EMPLOYER CATEGORIES.—The Sec-
18 retary may, in any rulemaking analysis or de-
19 sign of standards, cluster relevant employers in
20 any categories such as standard industry or oc-
21 cupational classifications or any common or re-
22 lated features of heat sources, conditions of em-
23 ployment, employer practices, employee charac-
24 teristics, or nature of place of employment that,
25 in the Secretary's reasonable determination, are

1 useful for designing an effective and practicable
2 program of standards, regulations, and enforce-
3 ment that maximizes the health and safety of
4 employees.

5 (3) PROTECTIVE PROGRAMS.—

6 (A) IN GENERAL.—In addition to measures
7 specified by this Act, the Secretary may develop
8 a worker heat protection standard with such
9 additional requirements that, in the Secretary’s
10 reasonable judgment, are necessary or appro-
11 priate to achieve the purposes of this Act. Such
12 measures may include the following:

13 (i) ENGINEERING CONTROLS.—Re-
14 quirements to eliminate hazardous levels of
15 heat stress through engineering controls,
16 such as isolation or shielding of employees
17 from sources of heat, exhaust ventilation,
18 insulation of hot surfaces, or climate-con-
19 trol technologies, as well as technology-
20 based standards that encourage the devel-
21 opment of such controls.

22 (ii) ADMINISTRATIVE CONTROLS.—Re-
23 quirements to limit exposure to hazardous
24 levels of heat stress by adjustment of work

1 procedures, work schedules, or other work
2 practices.

3 (iii) PERSONAL PROTECTIVE EQUIP-
4 MENT.—Requirements to provide, at the
5 employer’s expense, personal protective
6 equipment such as water-cooled garments,
7 air-cooled garments, heat-reflective cloth-
8 ing, and cooling vests.

9 (iv) HEALTH-RELATED PROTOCOLS.—
10 Requirements to conduct medical symptom
11 monitoring, emergency response protocols,
12 medical removal protection, or training of
13 employees and supervisors in recognition of
14 symptoms of heat-related illness and ap-
15 propriate responses.

16 (v) TRAINING REQUIREMENTS.—Re-
17 quirements to train employees and super-
18 visors in topics reasonable or necessary to
19 achieve the implementation of the require-
20 ments of a standard or the purposes of
21 this Act, including—

22 (I) training of employees in signs
23 and symptoms of heat-related illness,
24 emergency response procedures, and
25 their rights under this Act; and

1 (II) training of supervisors in
2 monitoring heat conditions and envi-
3 ronmental forecasts, recognizing signs
4 of heat-related illness, and protocols
5 for responding to likely heat-related
6 illness.

7 (vi) PLANNING REQUIREMENTS.—Re-
8 quirements for a heat illness and injury
9 prevention plan that—

10 (I) is of sufficient quality to ef-
11 fectuate the purposes of this Act and
12 to effectuate the requirements of the
13 standard that apply to the employer;

14 (II) is developed, updated, and
15 implemented with the meaningful par-
16 ticipation of the employer's employees
17 and, where applicable, such employ-
18 ees' representatives, for all aspects of
19 the plan;

20 (III) is produced and maintained
21 in writing and updated in light of
22 changing conditions or practices; and

23 (IV) is made available, upon re-
24 quest, to any employee, the employee's
25 representative, and the Secretary.

1 (vii) STANDARD HEALTH AND SAFETY
2 MEASURES.—Any measures described in
3 section 6(B)(7) of the Occupational Safety
4 and Health Act of 1970 (29 U.S.C.
5 655(B)(7)).

6 (B) INNOVATIVE SOLUTIONS.—As the rel-
7 evant scientific evidence develops, technological
8 solutions improve, and environmental conditions
9 or new work practices aggravate the risk of
10 heat-related illness or injury, the Secretary may
11 modify, supplement, or revise a worker heat
12 protection standard by rule in order to improve
13 such standard in light of such changes, even if
14 it departs from long-standing past practice,
15 provided that the resulting standard is con-
16 sistent with this Act.

17 (C) CORE PRACTICES.—The Secretary
18 shall establish criteria under which an employer
19 who exposes or may reasonably be anticipated
20 to expose an employee to heat or heat stress
21 that is not reduced below hazardous levels by
22 engineering controls or personal protective
23 equipment shall implement a reasonable pro-
24 gram that includes—

- 1 (i) suitably cool potable water or ap-
2 propriate hydration, provided at employer
3 expense;
- 4 (ii) periodic paid rest breaks sched-
5 uled to reduce heat stress below hazardous
6 levels;
- 7 (iii) access to shade or suitable cool-
8 down spaces;
- 9 (iv) acclimatization policies; and
- 10 (v) such measures that are necessary
11 or appropriate to ensure effective imple-
12 mentation of the requirements of this sub-
13 paragraph.

14 (4) OTHER SPECIFICATIONS.—

15 (A) PROTECTION OF PAY.—The Secretary
16 shall require that, for any required duration
17 such as rest breaks, medical removal protection,
18 and training, an employee shall receive com-
19 pensation at the regular rate at which such em-
20 ployee is employed.

21 (B) LANGUAGE ACCESS.—Any required
22 training, poster, label, hazard alert, or written
23 plan shall be provided in English and a lan-
24 guage understood by the employees, if such is
25 not English, and prepared appropriately for the

1 vocabulary, educational level, and literacy of the
2 employees.

3 (C) TEMPORARY LABOR CAMPS.—The Sec-
4 retary shall revise the Secretary’s standard for
5 temporary labor camps to the extent necessary
6 to achieve the purposes of this Act.

7 (5) MAINTAINING PROTECTION.—No worker
8 heat protection standard promulgated under this Act
9 may reduce the protection afforded employees by an
10 existing worker heat protection standard.

11 (b) INITIAL STANDARDS.—Not later than the date
12 that is 1 year after the date of enactment of this Act,
13 the Secretary shall promulgate, without regard to the re-
14 quirements of chapters 5 and 6 of title 5, United States
15 Code, subchapter I of chapter 35 of title 44, United States
16 Code (commonly known as the “Paperwork Reduction
17 Act”), or the National Environmental Policy Act of 1969
18 (42 U.S.C. 431 et seq.), an interim final rule establishing
19 a worker heat protection standard and related record-
20 keeping and reporting requirements. Such rule shall take
21 effect upon issuance (except that it may include a reason-
22 able delay in the effective date), shall have the legal effect
23 of an occupational safety and health standard as defined
24 by section 3(8) of the Occupational Safety and Health Act
25 of 1970 (29 U.S.C. 652(8)), and shall remain in effect

1 until superseded by a final rule promulgated pursuant to
2 this Act.

3 (c) RULEMAKING PROCEDURES.—For any rule-
4 making pursuant to this Act after publication of the in-
5 terim final rule in subsection (b), the following procedures
6 shall apply:

7 (1) IN GENERAL.—The Secretary shall, upon a
8 showing by a petitioner pursuant to paragraph (2)
9 or the Secretary's own determination that a worker
10 heat protection standard is necessary or appropriate
11 to regulate employees' exposure to conditions known
12 to cause or that may reasonably be anticipated to
13 cause heat-related illness or injury, promulgate any
14 worker heat protection standard in accordance with
15 the policies set forth in this section and in accord-
16 ance with section 553 of title 5, United States Code
17 (without regard to any reference in such section to
18 sections 556 and 557 of such title).

19 (2) PETITIONS FOR RULEMAKING.—Any person
20 may petition the Secretary to promulgate or modify
21 a worker heat protection standard. Within 18
22 months after receipt of a petition, the Secretary
23 shall either grant or deny the petition by publishing
24 a written explanation of the reasons for the Sec-
25 retary's decision. The Secretary may not deny a pe-

1 tition solely on the basis of inadequate resources or
2 insufficient time for review.

3 (3) TIMELINES.—Except as otherwise provided
4 in subsection (b), the Secretary shall observe the fol-
5 lowing schedule for rulemaking:

6 (A) PROPOSED STANDARDS.—Within one
7 year after granting a petition for rulemaking
8 under paragraph (2), the Secretary shall pub-
9 lish a proposed worker heat protection standard
10 consistent with this section.

11 (B) FINAL STANDARDS.—The Secretary
12 shall promulgate, within one year after such
13 publication, such standards with such modifica-
14 tions as the Secretary deems appropriate.

15 (C) EFFECT.—Standards or revisions
16 thereof shall become effective upon promulga-
17 tion, except that the Secretary may include a
18 reasonable delay in the effective date.

19 (4) TRANSPARENCY IN RULEMAKING.—For any
20 rulemaking notice pursuant to this Act, the Sec-
21 retary shall place in the public record not later than
22 the date of such rulemaking notice the following:

23 (A) The drafts of such rulemakings pre-
24 pared before publication and submitted by the
25 Secretary to the Office of Management and

1 Budget for any interagency review process prior
2 to publication, all documents accompanying
3 such drafts, all written comments thereon by
4 other agencies, and all written responses to
5 such written comments by the Secretary.

6 (B) A summary of the substance of any
7 changes between the text of the draft rule-
8 making that the agency provided to the Office
9 of Management and Budget under section
10 6(a)(3)(B)(i) of Executive Order 12,866 and
11 the text published in the Federal Register, ex-
12 cluding any non-substantive changes such as
13 spelling or grammatical corrections or re-order-
14 ing of text that has no legal effect.

15 (C) A statement identifying any party or
16 entity at whose request any such change was
17 made.

18 (5) JUDICIAL REVIEW.—

19 (A) FILING OF PETITION.—A petition for
20 review in accordance with section 702 of title 5,
21 United States Code, of action of the Secretary
22 in promulgating any worker heat protection
23 standard or any other nationally applicable reg-
24 ulation or final action taken by the Secretary
25 pursuant to this Act may be filed only in the

1 United States Court of Appeals for the District
2 of Columbia. The filing of a petition for review
3 shall not postpone the effectiveness of such rule
4 or action.

5 (B) **TIMELY FILING.**—Any petition for re-
6 view under this paragraph shall be filed within
7 sixty days from the date notice of such promul-
8 gation, approval, or action appears in the Fed-
9 eral Register.

10 (C) **NOT SUBJECT TO REVIEW.**—Action of
11 the Secretary with respect to which review could
12 have been obtained under this paragraph shall
13 not be subject to judicial review in civil or
14 criminal proceedings for enforcement. Failure
15 to promulgate any standard pursuant to the
16 schedule established by this section shall be
17 subject to review.

18 **SEC. 4. IMPLEMENTATION AND ENFORCEMENT.**

19 (a) **IN GENERAL.**—Except as otherwise provided by
20 this section—

21 (1) a worker heat protection standard shall
22 have the same legal effect as an occupational safety
23 and health standard as defined by section 3(8) of
24 the Occupational Safety and Health Act of 1970 (29
25 U.S.C. 652(8)); and

1 (2) any rule, regulation, or order promulgated
2 pursuant to this Act shall have the same legal effect
3 as a rule, regulation, or order promulgated pursuant
4 to the Occupational Safety and Health Act of 1970
5 (29 U.S.C. 651 et seq.).

6 (b) ENFORCEMENT.—

7 (1) STATUTE OF LIMITATIONS FOR CITATION.—

8 No citation for any violation of section 2 or any
9 standard, rule, regulation, or order pursuant to this
10 Act may be issued under this section after the expi-
11 ration of four years following the occurrence of any
12 violation.

13 (2) REVIEW.—The Commission shall grant sub-
14 stantial deference to any reasonable interpretation
15 by the Secretary of this Act or any standard, regula-
16 tion, or order pursuant to this Act.

17 (c) RECORDKEEPING AND REPORTING.—

18 (1) IN GENERAL.—With regard to record-
19 keeping and reporting, the Secretary and Secretary
20 of Health and Human Services shall have the same
21 authority to prescribe regulations related to this Act
22 as under section 8 of the Occupational Safety and
23 Health Act (29 U.S.C. 657).

24 (2) CONSOLIDATING REQUIREMENTS.—The
25 Secretary may incorporate recordkeeping and report-

1 ing requirements under this section into existing rec-
2 ordkeeping and reporting requirements promulgated
3 pursuant to section 8 of the Occupational Safety and
4 Health Act (29 U.S.C. 657), provided that a viola-
5 tion of such a requirement with regard to implemen-
6 tation of this Act shall be enforced as a distinct vio-
7 lation separate and apart from any other simulta-
8 neous violation of a requirement pursuant to the Oc-
9 cupational Safety and Health Act.

10 (d) WHISTLEBLOWER PROTECTIONS.—

11 (1) COMPLAINT.—Any employee who believes
12 that such employee has been discharged or otherwise
13 discriminated against by any person in violation of
14 section 11(c)(1) of the Occupational Safety and
15 Health Act (29 U.S.C. 660(c)(1)) with regard to any
16 matter under or related to this Act may, within 180
17 days after such violation occurs, file a complaint
18 with the Secretary following the procedures in para-
19 graph (2) of such section alleging such discrimina-
20 tion.

21 (2) ACTION.—If the Secretary fails to notify
22 the complainant of the Secretary's determination on
23 the complaint within 90 days pursuant to section
24 11(c)(3) of the Occupational Safety and Health Act
25 (29 U.S.C. 660(c)(3)) or determines not to bring an

1 action pursuant to paragraph (2) of such section,
2 such employee may bring an action in any appro-
3 priate United States district court against such per-
4 son for all appropriate relief in accordance with
5 paragraph (2) of such section as well as reasonable
6 attorney's fees and costs.

7 **SEC. 5. GENERAL PROVISIONS.**

8 (a) SEVERABILITY.—If any provision of this Act is
9 held invalid, the remainder of this Act shall not be affected
10 thereby. If the application of any provision of this Act to
11 any person or circumstance is held invalid, the application
12 of such provision to other persons or circumstances shall
13 not be affected thereby.

14 (b) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated from sums not otherwise
16 appropriated, for each fiscal year, such sums as may be
17 necessary to carry out this Act.

18 **SEC. 6. AGENDA FOR FURTHER REVIEW AND ACTION.**

19 The Secretary shall update the National Agricultural
20 Workers Survey with such questions that, in the Sec-
21 retary's judgment, are useful to identify the incidence and
22 prevalence of heat-related illness and injury and assess the
23 impact of standards and enforcement pursuant to this Act.
24 Within one year of the date of enactment of this Act, the
25 Secretary shall submit to the Committee on Education and

1 the Workforce of the House of Representatives and the
2 Committee on Health, Education, Labor, and Pensions of
3 the Senate a report on the Secretary's implementation of
4 this section.

5 **SEC. 7. DEFINITIONS.**

6 For purposes of this Act:

7 (1) The term "Commission" means the Occupa-
8 tional Safety and Health Review Commission.

9 (2) The term "employee" has the same mean-
10 ing as in section 3(6) of the Occupational Safety and
11 Health Act of 1970 (29 U.S.C. 652(6)).

12 (3) The term "employer" has the same meaning
13 as in section 3(5) of the Occupational Safety and
14 Health Act of 1970 (29 U.S.C. 652(5)).

15 (4) The term "heat stress" means the load of
16 heat that a person experiences due to—

17 (A) sources of heat or heat retention (in-
18 cluding the combined contributions of metabolic
19 heat, environmental factors, and clothing or
20 personal protective equipment); or

21 (B) the presence of heat in a work setting.

22 (5) The term "heat-related illness" means a
23 material impairment of health that occurs due to
24 heat stress.

1 (6) The term “heat-related injury” means an
2 injury caused by exposure to heat or sources of heat
3 or occurring as a result of heat stress.

4 (7) The term “Institute” means the National
5 Institute for Occupational Safety and Health.

6 (8) The term “Secretary” means the Secretary
7 of Labor.

8 (9) The term “worker heat protection stand-
9 ard” means a standard that regulates employee ex-
10 posure to heat stress and prevents heat-related ill-
11 ness and injury by requiring conditions or the adop-
12 tion or use of one or more practices, means, meth-
13 ods, operations, or processes reasonably necessary or
14 appropriate to provide employment and places of
15 employment that are safe or healthful.