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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

6 SEC. 2. EMPLOYER DUTIES.

8 Each employer shall—
(1) furnish employment and a place of employment free from conditions that may reasonably be anticipated to cause death or serious physical harm from heat stress; and

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

SEC. 3. WORKER HEAT PROTECTION STANDARDS.

(a) DESIGN OF STANDARDS.—

(1) IN GENERAL.—The Secretary shall promulgate a worker heat protection standard that, in accordance with the best available evidence, establishes the maximum protective program of measures an employer shall implement to regulate employees’ exposure to heat stress and prevent heat-related illness and injury that attains the highest degree of health and safety protection to the extent feasible.

(2) CONSIDERATIONS.—

(A) DEMONSTRABLY ACHIEVABLE MEASURES.—The Secretary may presume that any requirement substantially equivalent to a requirement adopted by a State plan approved by the Occupational Safety and Health Administration pursuant to section 18(c) of the Occupational Safety and Health Act of 1970 (29
U.S.C. 667(c)) and that has been in effect for at least 1 year is feasible.

(B) PRIORITYING WORKER PROTECTION.—In weighing any considerations during rulemaking, the Secretary shall place pre-eminent value on assuring employees a safe and healthful working environment.

(C) AVAILABLE EXPERTISE.—If the Secretary adopts any finding or recommendation by the Institute, the American Conference of Governmental Industrial Hygienists, or the National Academies of Sciences, Engineering, and Medicine relevant to heat stress in a rule-making pursuant to this Act, such finding or recommendation shall be considered the best available evidence.

(D) EMPLOYER CATEGORIES.—The Secretary may, in any rulemaking analysis or design of standards, cluster relevant employers in any categories such as standard industry or occupational classifications or any common or related features of heat sources, conditions of employment, employer practices, employee characteristics, or nature of place of employment that, in the Secretary’s reasonable determination, are
useful for designing an effective and practicable program of standards, regulations, and enforcement that maximizes the health and safety of employees.

(3) **PROTECTIVE PROGRAMS.**—

(A) **IN GENERAL.**—In addition to measures specified by this Act, the Secretary may develop a worker heat protection standard with such additional requirements that, in the Secretary’s reasonable judgment, are necessary or appropriate to achieve the purposes of this Act. Such measures may include the following:

(i) **ENGINEERING CONTROLS.**—Requirements to eliminate hazardous levels of heat stress through engineering controls, such as isolation or shielding of employees from sources of heat, exhaust ventilation, insulation of hot surfaces, or climate-control technologies, as well as technology-based standards that encourage the development of such controls.

(ii) **ADMINISTRATIVE CONTROLS.**—Requirements to limit exposure to hazardous levels of heat stress by adjustment of work
procedures, work schedules, or other work practices.

(iii) **PERSONAL PROTECTIVE EQUIPMENT.**—Requirements to provide, at the employer’s expense, personal protective equipment such as water-cooled garments, air-cooled garments, heat-reflective clothing, and cooling vests.

(iv) **HEALTH-RELATED PROTOCOLS.**—Requirements to conduct medical symptom monitoring, emergency response protocols, medical removal protection, or training of employees and supervisors in recognition of symptoms of heat-related illness and appropriate responses.

(v) **TRAINING REQUIREMENTS.**—Requirements to train employees and supervisors in topics reasonable or necessary to achieve the implementation of the requirements of a standard or the purposes of this Act, including—

(I) training of employees in signs and symptoms of heat-related illness, emergency response procedures, and their rights under this Act; and
(II) training of supervisors in monitoring heat conditions and environmental forecasts, recognizing signs of heat-related illness, and protocols for responding to likely heat-related illness.

(vi) Planning Requirements.—Requirements for a heat illness and injury prevention plan that—

(I) is of sufficient quality to effectuate the purposes of this Act and to effectuate the requirements of the standard that apply to the employer;

(II) is developed, updated, and implemented with the meaningful participation of the employer’s employees and, where applicable, such employees’ representatives, for all aspects of the plan;

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

(IV) is made available, upon request, to any employee, the employee’s representative, and the Secretary.
(vii) **STANDARD HEALTH AND SAFETY MEASURES.**—Any measures described in section 6(B)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(B)(7)).

(B) **INNOVATIVE SOLUTIONS.**—As the relevant scientific evidence develops, technological solutions improve, and environmental conditions or new work practices aggravate the risk of heat-related illness or injury, the Secretary may modify, supplement, or revise a worker heat protection standard by rule in order to improve such standard in light of such changes, even if it departs from long-standing past practice, provided that the resulting standard is consistent with this Act.

(C) **CORE PRACTICES.**—The Secretary shall establish criteria under which an employer who exposes or may reasonably be anticipated to expose an employee to heat or heat stress that is not reduced below hazardous levels by engineering controls or personal protective equipment shall implement a reasonable program that includes—
(i) suitably cool potable water or appropriate hydration, provided at employer expense;
(ii) periodic paid rest breaks scheduled to reduce heat stress below hazardous levels;
(iii) access to shade or suitable cool-down spaces;
(iv) acclimatization policies; and
(v) such measures that are necessary or appropriate to ensure effective implementation of the requirements of this subparagraph.

(4) Other specifications.—
(A) Protection of pay.—The Secretary shall require that, for any required duration such as rest breaks, medical removal protection, and training, an employee shall receive compensation at the regular rate at which such employee is employed.
(B) Language access.—Any required training, poster, label, hazard alert, or written plan shall be provided in English and a language understood by the employees, if such is not English, and prepared appropriately for the
vocabulary, educational level, and literacy of the employees.

(C) Temporary Labor Camps.—The Secretary shall revise the Secretary’s standard for temporary labor camps to the extent necessary to achieve the purposes of this Act.

(5) Maintaining Protection.—No worker heat protection standard promulgated under this Act may reduce the protection afforded employees by an existing worker heat protection standard.

(b) Initial Standards.—Not later than the date that is 1 year after the date of enactment of this Act, the Secretary shall promulgate, without regard to the requirements of chapters 5 and 6 of title 5, United States Code, subchapter I of chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”), or the National Environmental Policy Act of 1969 (42 U.S.C. 431 et seq.), an interim final rule establishing a worker heat protection standard and related record-keeping and reporting requirements. Such rule shall take effect upon issuance (except that it may include a reasonable delay in the effective date), shall have the legal effect of an occupational safety and health standard as defined by section 3(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(8)), and shall remain in effect
until superseded by a final rule promulgated pursuant to this Act.

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

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

(2) PETITIONS FOR RULEMAKING.—Any person may petition the Secretary to promulgate or modify a worker heat protection standard. Within 18 months after receipt of a petition, the Secretary shall either grant or deny the petition by publishing a written explanation of the reasons for the Secretary’s decision. The Secretary may not deny a pe-
tition solely on the basis of inadequate resources or insufficient time for review.

(3) Timelines.—Except as otherwise provided in subsection (b), the Secretary shall observe the following schedule for rulemaking:

(A) Proposed Standards.—Within one year after granting a petition for rulemaking under paragraph (2), the Secretary shall publish a proposed worker heat protection standard consistent with this section.

(B) Final Standards.—The Secretary shall promulgate, within one year after such publication, such standards with such modifications as the Secretary deems appropriate.

(C) Effect.—Standards or revisions thereof shall become effective upon promulgation, except that the Secretary may include a reasonable delay in the effective date.

(4) Transparency in Rulemaking.—For any rulemaking notice pursuant to this Act, the Secretary shall place in the public record not later than the date of such rulemaking notice the following:

(A) The drafts of such rulemakings prepared before publication and submitted by the Secretary to the Office of Management and
Budget for any interagency review process prior to publication, all documents accompanying such drafts, all written comments thereon by other agencies, and all written responses to such written comments by the Secretary.

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

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

(5) JUDICIAL REVIEW.—

(A) FILING OF PETITION.—A petition for review in accordance with section 702 of title 5, United States Code, of action of the Secretary in promulgating any worker heat protection standard or any other nationally applicable regulation or final action taken by the Secretary pursuant to this Act may be filed only in the
United States Court of Appeals for the District of Columbia. The filing of a petition for review shall not postpone the effectiveness of such rule or action.

(B) TIMELY FILING.—Any petition for review under this paragraph shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register.

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

SEC. 4. IMPLEMENTATION AND ENFORCEMENT.

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

(1) a worker heat protection standard shall have the same legal effect as an occupational safety and health standard as defined by section 3(8) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(8)); and
(2) any rule, regulation, or order promulgated
pursuant to this Act shall have the same legal effect
as a rule, regulation, or order promulgated pursuant
to the Occupational Safety and Health Act of 1970
(29 U.S.C. 651 et seq.).

(b) ENFORCEMENT.—

(1) STATUTE OF LIMITATIONS FOR CITATION.—
No citation for any violation of section 2 or any
standard, rule, regulation, or order pursuant to this
Act may be issued under this section after the expi-
ration of four years following the occurrence of any
violation.

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

(c) RECORDKEEPING AND REPORTING.—

(1) IN GENERAL.—With regard to record-
keeping and reporting, the Secretary and Secretary
of Health and Human Services shall have the same
authority to prescribe regulations related to this Act
as under section 8 of the Occupational Safety and

(2) CONSOLIDATING REQUIREMENTS.—The
Secretary may incorporate recordkeeping and report-
ing requirements under this section into existing recordkeeping and reporting requirements promulgated pursuant to section 8 of the Occupational Safety and Health Act (29 U.S.C. 657), provided that a violation of such a requirement with regard to implementation of this Act shall be enforced as a distinct violation separate and apart from any other simultaneous violation of a requirement pursuant to the Occupational Safety and Health Act.

(d) WHISTLEBLOWER PROTECTIONS.—

(1) COMPLAINT.—Any employee who believes that such employee has been discharged or otherwise discriminated against by any person in violation of section 11(e)(1) of the Occupational Safety and Health Act (29 U.S.C. 660(e)(1)) with regard to any matter under or related to this Act may, within 180 days after such violation occurs, file a complaint with the Secretary following the procedures in paragraph (2) of such section alleging such discrimination.

(2) ACTION.—If the Secretary fails to notify the complainant of the Secretary’s determination on the complaint within 90 days pursuant to section 11(e)(3) of the Occupational Safety and Health Act (29 U.S.C. 660(e)(3)) or determines not to bring an
action pursuant to paragraph (2) of such section, such employee may bring an action in any appropriate United States district court against such person for all appropriate relief in accordance with paragraph (2) of such section as well as reasonable attorney’s fees and costs.

SEC. 5. GENERAL PROVISIONS.

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

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

SEC. 6. AGENDA FOR FURTHER REVIEW AND ACTION.

The Secretary shall update the National Agricultural Workers Survey with such questions that, in the Secretary’s judgment, are useful to identify the incidence and prevalence of heat-related illness and injury and assess the impact of standards and enforcement pursuant to this Act. Within one year of the date of enactment of this Act, the Secretary shall submit to the Committee on Education and
the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the Secretary’s implementation of this section.

**SEC. 7. DEFINITIONS.**

For purposes of this Act:

1. The term “Commission” means the Occupational Safety and Health Review Commission.
2. The term “employee” has the same meaning as in section 3(6) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(6)).
3. The term “employer” has the same meaning as in section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)).
4. The term “heat stress” means the load of heat that a person experiences due to—
   - sources of heat or heat retention (including the combined contributions of metabolic heat, environmental factors, and clothing or personal protective equipment); or
   - the presence of heat in a work setting.
5. The term “heat-related illness” means a material impairment of health that occurs due to heat stress.
(6) The term “heat-related injury” means an injury caused by exposure to heat or sources of heat or occurring as a result of heat stress.

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

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

(9) The term “worker heat protection standard” means a standard that regulates employee exposure to heat stress and prevents heat-related illness and injury by requiring conditions or the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide employment and places of employment that are safe or healthful.