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HOUSE BILL NO. 1092

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Delegate Hernandez)

A *BILL* to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to protection of employees; standards for heat illness prevention.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 40.1-44.2 as follows:

§ 40.1-44.2. Standards for heat illness prevention.

A. As used in this section:

"Employer" means any employer subject to jurisdiction of the Virginia Occupational Safety and Health Program under 16VAC25-60.

"Heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load and includes heat cramps, heat rash, heat edema, heat exhaustion, heat syncope, rhabdomyolysis, and heat stroke.

"Worker" means an employee, independent contractor, or other laborer whose worksite conditions are controlled by an employer.

B. The Safety and Health Codes Board shall adopt regulations establishing standards designed to protect workers from heat illness during indoor and outdoor work. Such standards shall include requirements for each employer to (i) provide water, access to shade or climate-controlled environments when practicable, rest periods, acclimatization to working in heat, and effective training regarding heat illness prevention; (ii) implement high-heat procedures when the temperature equals or exceeds a heat index of 80 degrees Fahrenheit; and (iii) establish effective emergency response procedures. There shall be exemptions for (a) heat exposure during the provision of emergency services that involve emergency law enforcement, emergency medical services, firefighting services, rescue and evacuation operations, or emergency restoration of essential utilities, including electric and telecommunication utilities, and (b) heat exposure lasting no longer than 15 consecutive minutes.

C. The regulations adopted by the Safety and Health Codes Board pursuant to this section shall be enforced as specified in §§ 40.1-49.3 through 40.1-49.7.

D. In addition to any penalties provided by this title, and without regard to any exhaustion of alternative administrative remedies provided for in this title, a worker may bring in an appropriate court of the Commonwealth an action based on a violation of the regulations promulgated pursuant to subsection B to enjoin such a violation, to recover statutory damages of \$1,000 per violation, or both. The court shall also award reasonable attorney fees and costs to any prevailing worker. If the court finds that an employer knowingly violated the provisions of such regulations, the court shall award an additional \$1,000 as liquidated damages. An action brought pursuant to this subsection shall commence within one year after the cause of action has accrued.

2. That no later than May 1, 2027, the Safety and Health Codes Board (the Board), in consultation with the Department of Labor and Industry, shall develop and adopt regulations that require employers to implement heat illness prevention plans pursuant to § 40.1-44.2 of the Code of Virginia, as created by this act. In developing such regulations, the Board shall consider the 2021 Draft Heat Illness Prevention Standard of the Virginia Department of Labor and Industry and standards created by the Federal Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health, the American Conference of Governmental Industrial Hygienists, the American National Standards Institute, the Maryland Occupational Safety and Health Division, the Oregon Occupational Safety and Health Division, and the California Division of Occupational Safety and Health. The Board shall also convene an advisory panel to assist in developing such regulations, which shall include (i) employee advocates and stakeholders as at least half of its membership and (ii) stakeholders from the agriculture and business industries and public institutions of higher education.

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