

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2193  
OFFERED BY MS. ADAMS OF NORTH CAROLINA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Asunción Valdivia  
3 Heat Illness and Fatality Prevention Act of 2022”.

**4 SEC. 2. EMPLOYER DUTIES.**

5 Each employer shall—

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

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

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

13 (a) DESIGN OF STANDARDS.—

14 (1) IN GENERAL.—The Secretary shall promul-  
15 gate a worker heat protection standard that, in ac-  
16 cordance with the best available evidence, establishes  
17 the maximum protective program of measures an  
18 employer shall implement to regulate employees’ ex-

1       posure to heat stress and prevent heat-related illness  
2       and injury that attains the highest degree of health  
3       and safety protection to the extent feasible.

4               (2) CONSIDERATIONS.—

5               (A) DEMONSTRABLY ACHIEVABLE MEAS-  
6       URES.—The Secretary may presume that any  
7       requirement substantially equivalent to a re-  
8       quirement adopted by a State plan approved by  
9       the Occupational Safety and Health Adminis-  
10      tration pursuant to section 18(c) of the Occupa-  
11      tional Safety and Health Act of 1970 (29  
12      U.S.C. 667(c)) and that has been in effect for  
13      at least 1 year is feasible.

14              (B) PRIORITIZING WORKER PROTEC-  
15      TION.—In weighing any considerations during  
16      rulemaking, the Secretary shall place pre-  
17      eminent value on assuring employees a safe and  
18      healthful working environment.

19              (C) AVAILABLE EXPERTISE.—If the Sec-  
20      retary adopts any finding or recommendation  
21      by the Institute, the American Conference of  
22      Governmental Industrial Hygienists, or the Na-  
23      tional Academies of Sciences, Engineering, and  
24      Medicine relevant to heat stress in a rule-  
25      making pursuant to this Act, such finding or

1 recommendation shall be considered the best  
2 available evidence.

3 (D) EMPLOYER CATEGORIES.—The Sec-  
4 retary may, in any rulemaking analysis or de-  
5 sign of standards, cluster relevant employers in  
6 any categories such as standard industry or oc-  
7 cupational classifications or any common or re-  
8 lated features of heat sources, conditions of em-  
9 ployment, employer practices, employee charac-  
10 teristics, or nature of place of employment that,  
11 in the Secretary's reasonable determination, are  
12 useful for designing an effective and practicable  
13 program of standards, regulations, and enforce-  
14 ment that maximizes the health and safety of  
15 employees.

16 (3) PROTECTIVE PROGRAMS.—

17 (A) IN GENERAL.—In addition to measures  
18 specified by this Act, the Secretary may develop  
19 a worker heat protection standard with such  
20 additional requirements that, in the Secretary's  
21 reasonable judgment, are necessary or appro-  
22 priate to achieve the purposes of this Act. Such  
23 measures may include the following:

24 (i) ENGINEERING CONTROLS.—Re-  
25 quirements to eliminate hazardous levels of

1 heat stress through engineering controls,  
2 such as isolation or shielding of employees  
3 from sources of heat, exhaust ventilation,  
4 insulation of hot surfaces, or climate-con-  
5 trol technologies, as well as technology-  
6 based standards that encourage the devel-  
7 opment of such controls.

8 (ii) ADMINISTRATIVE CONTROLS.—Re-  
9 quirements to limit exposure to hazardous  
10 levels of heat stress by adjustment of work  
11 procedures, work schedules, or other work  
12 practices.

13 (iii) PERSONAL PROTECTIVE EQUIP-  
14 MENT.—Requirements to provide, at the  
15 employer's expense, personal protective  
16 equipment such as water-cooled garments,  
17 air-cooled garments, heat-reflective cloth-  
18 ing, and cooling vests.

19 (iv) HEALTH-RELATED PROTOCOLS.—  
20 Requirements to conduct medical symptom  
21 monitoring, emergency response protocols,  
22 medical removal protection, or training of  
23 employees and supervisors in recognition of  
24 symptoms of heat-related illness and ap-  
25 propriate responses.

1 (v) TRAINING REQUIREMENTS.—Re-  
2 quirements to train employees and super-  
3 visors in topics reasonable or necessary to  
4 achieve the implementation of the require-  
5 ments of a standard or the purposes of  
6 this Act, including—

7 (I) training of employees in signs  
8 and symptoms of heat-related illness,  
9 emergency response procedures, and  
10 their rights under this Act; and

11 (II) training of supervisors in  
12 monitoring heat conditions and envi-  
13 ronmental forecasts, recognizing signs  
14 of heat-related illness, and protocols  
15 for responding to likely heat-related  
16 illness.

17 (vi) PLANNING REQUIREMENTS.—Re-  
18 quirements for a heat illness and injury  
19 prevention plan that—

20 (I) is of sufficient quality to ef-  
21 fectuate the purposes of this Act and  
22 to effectuate the requirements of the  
23 standard that apply to the employer;

24 (II) is developed, updated, and  
25 implemented with the meaningful par-

1 participation of the employer's employees  
2 and, where applicable, such employ-  
3 ees' representatives, for all aspects of  
4 the plan;

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

8 (IV) is made available, upon re-  
9 quest, to any employee, the employee's  
10 representative, and the Secretary.

11 (vii) STANDARD HEALTH AND SAFETY  
12 MEASURES.—Any measures described in  
13 section 6(B)(7) of the Occupational Safety  
14 and Health Act of 1970 (29 USC  
15 655(B)(7)).

16 (B) INNOVATIVE SOLUTIONS.—As the rel-  
17 evant scientific evidence develops, technological  
18 solutions improve, and environmental conditions  
19 or new work practices aggravate the risk of  
20 heat-related illness or injury, the Secretary may  
21 modify, supplement, or revise a worker heat  
22 protection standard by rule in order to improve  
23 such standard in light of such changes, even if  
24 it departs from long-standing past practice,

1 provided that the resulting standard is con-  
2 sistent with this Act.

3 (C) CORE PRACTICES.—The Secretary  
4 shall establish criteria under which an employer  
5 who exposes or may reasonably be anticipated  
6 to expose an employee to heat or heat stress  
7 that is not reduced below hazardous levels by  
8 engineering controls or personal protective  
9 equipment shall implement a reasonable pro-  
10 gram that includes—

11 (i) suitably cool potable water or ap-  
12 propriate hydration, provided at employer  
13 expense;

14 (ii) periodic paid rest breaks sched-  
15 uled to reduce heat stress below hazardous  
16 levels;

17 (iii) access to shade or suitable cool-  
18 down spaces;

19 (iv) acclimatization policies; and

20 (v) such measures that are necessary  
21 or appropriate to ensure effective imple-  
22 mentation of the requirements of this sub-  
23 paragraph.

24 (4) OTHER SPECIFICATIONS.—

1 (A) PROTECTION OF PAY.—The Secretary  
2 shall require that, for any required duration  
3 such as rest breaks, medical removal protection,  
4 and training, an employee shall receive com-  
5 pensation at the regular rate at which such em-  
6 ployee is employed.

7 (B) LANGUAGE ACCESS.—Any required  
8 training, poster, label, hazard alert, or written  
9 plan shall be provided in English and a lan-  
10 guage understood by the employees, if such is  
11 not English, and prepared appropriately for the  
12 vocabulary, educational level, and literacy of the  
13 employees.

14 (C) TEMPORARY LABOR CAMPS.—The Sec-  
15 retary shall revise the Secretary’s standard for  
16 temporary labor camps to the extent necessary  
17 to achieve the purposes of this Act.

18 (5) MAINTAINING PROTECTION.—No worker  
19 heat protection standard promulgated under this Act  
20 may reduce the protection afforded employees by an  
21 existing worker heat protection standard.

22 (b) INITIAL STANDARDS.—Not later than the date  
23 that is 1 year after the date of enactment of this Act,  
24 the Secretary shall promulgate, without regard to the re-  
25 quirements of chapters 5 and 6 of title 5, United States



1 Code, subchapter I of chapter 35 of title 44, United States  
2 Code (commonly known as the “Paperwork Reduction  
3 Act”), or the National Environmental Policy Act of 1969  
4 (42 U.S.C. 431 et seq.), an interim final rule establishing  
5 a worker heat protection standard and related record-  
6 keeping and reporting requirements. Such rule shall take  
7 effect upon issuance (except that it may include a reason-  
8 able delay in the effective date), shall have the legal effect  
9 of an occupational safety and health standard as defined  
10 by section 3(8) of the Occupational Safety and Health Act  
11 of 1970 (29 U.S.C. 652(8)), and shall remain in effect  
12 until superseded by a final rule promulgated pursuant to  
13 this Act.

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

18 (1) IN GENERAL.—The Secretary shall, upon a  
19 showing by a petitioner pursuant to paragraph (2)  
20 or the Secretary’s own determination that a worker  
21 heat protection standard is necessary or appropriate  
22 to regulate employees’ exposure to conditions known  
23 to cause or that may reasonably be anticipated to  
24 cause heat-related illness or injury, promulgate any  
25 worker heat protection standard in accordance with

1 the policies set forth in this section and in accord-  
2 ance with section 553 of title 5, United States Code  
3 (without regard to any reference in such section to  
4 sections 556 and 557 of such title).

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

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

17 (A) PROPOSED STANDARDS.—Within one  
18 year after granting a petition for rulemaking  
19 under paragraph (2), the Secretary shall pub-  
20 lish a proposed worker heat protection standard  
21 consistent with this section.

22 (B) FINAL STANDARDS.—The Secretary  
23 shall promulgate, within one year after such  
24 publication, such standards with such modifica-  
25 tions as the Secretary deems appropriate.

1 (C) EFFECT.—Standards or revisions  
2 thereof shall become effective upon promulga-  
3 tion, except that the Secretary may include a  
4 reasonable delay in the effective date.

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

9 (A) The drafts of such rulemakings pre-  
10 pared before publication and submitted by the  
11 Secretary to the Office of Management and  
12 Budget for any interagency review process prior  
13 to publication, all documents accompanying  
14 such drafts, all written comments thereon by  
15 other agencies, and all written responses to  
16 such written comments by the Secretary.

17 (B) A summary of the substance of any  
18 changes between the text of the draft rule-  
19 making that the agency provided to the Office  
20 of Management and Budget under section  
21 6(a)(3)(B)(i) of Executive Order 12,866 and  
22 the text published in the Federal Register, ex-  
23 cluding any non-substantive changes such as  
24 spelling or grammatical corrections or re-order-  
25 ing of text that has no legal effect.

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

4 (5) JUDICIAL REVIEW.—

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

16 (B) TIMELY FILING.—Any petition for re-  
17 view under this paragraph shall be filed within  
18 sixty days from the date notice of such promul-  
19 gation, approval, or action appears in the Fed-  
20 eral Register.

21 (C) NOT SUBJECT TO REVIEW.—Action of  
22 the Secretary with respect to which review could  
23 have been obtained under this paragraph shall  
24 not be subject to judicial review in civil or  
25 criminal proceedings for enforcement. Failure

1 to promulgate any standard pursuant to the  
2 schedule established by this section shall be  
3 subject to review.

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

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

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

12 (2) any rule, regulation, or order promulgated  
13 pursuant to this Act shall have the same legal effect  
14 as a rule, regulation, or order promulgated pursuant  
15 to the Occupational Safety and Health Act of 1970  
16 (29 U.S.C. 651 et seq.).

17 (b) ENFORCEMENT.—

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

24 (2) REVIEW.—The Commission shall grant sub-  
25 stantial deference to any reasonable interpretation

1 by the Secretary of this Act or any standard, regula-  
2 tion, or order pursuant to this Act.

3 (c) RECORDKEEPING AND REPORTING.—

4 (1) IN GENERAL.—With regard to record-  
5 keeping and reporting, the Secretary and Secretary  
6 of Health and Human Services shall have the same  
7 authority to prescribe regulations related to this Act  
8 as under section 8 of the Occupational Safety and  
9 Health Act (29 U.S.C. 657).

10 (2) CONSOLIDATING REQUIREMENTS.—The  
11 Secretary may incorporate recordkeeping and report-  
12 ing requirements under this section into existing rec-  
13 ordkeeping and reporting requirements promulgated  
14 pursuant to section 8 of the Occupational Safety and  
15 Health Act (29 U.S.C. 657), provided that a viola-  
16 tion of such a requirement with regard to implemen-  
17 tation of this Act shall be enforced as a distinct vio-  
18 lation separate and apart from any other simulta-  
19 neous violation of a requirement pursuant to the Oc-  
20 cupational Safety and Health Act.

21 (d) WHISTLEBLOWER PROTECTIONS.—

22 (1) COMPLAINT.—Any employee who believes  
23 that such employee has been discharged or otherwise  
24 discriminated against by any person in violation of  
25 section 11(c)(1) of the Occupational Safety and

1 Health Act (29 U.S.C. 660(c)(1)) with regard to any  
2 matter under or related to this Act may, within 180  
3 days after such violation occurs, file a complaint  
4 with the Secretary following the procedures in para-  
5 graph (2) of such section alleging such discrimina-  
6 tion.

7 (2) ACTION.—If the Secretary fails to notify  
8 the complainant of the Secretary’s determination on  
9 the complaint within 90 days pursuant to section  
10 11(c)(3) of the Occupational Safety and Health Act  
11 (29 U.S.C. 660(c)(3)) or determines not to bring an  
12 action pursuant to paragraph (2) of such section,  
13 such employee may bring an action in any appro-  
14 priate United States district court against such per-  
15 son for all appropriate relief in accordance with  
16 paragraph (2) of such section as well as reasonable  
17 attorney’s fees and costs.

18 **SEC. 5. GENERAL PROVISIONS.**

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

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

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

6 The Secretary shall update the National Agricultural  
7 Workers Survey with such questions that, in the Sec-  
8 retary’s judgment, are useful to identify the incidence and  
9 prevalence of heat-related illness and injury and assess the  
10 impact of standards and enforcement pursuant to this Act.  
11 Within one year of the date of enactment of this Act, the  
12 Secretary shall submit to the Committee on Education and  
13 Labor of the House of Representatives and the Committee  
14 on Health, Education, Labor, and Pensions of the Senate  
15 a report on the Secretary’s implementation of this sub-  
16 section.

17 **SEC. 7. DEFINITIONS.**

18 For purposes of this Act:

19 (1) The term “Commission” means the Occupa-  
20 tional Safety and Health Review Commission.

21 (2) The term “employee” has the same mean-  
22 ing as in section 3(6) of the Occupational Safety and  
23 Health Act of 1970 (29 U.S.C. 652(6)).



1           (3) The term “employer” has the same meaning  
2 as in section 3(5) of the Occupational Safety and  
3 Health Act of 1970 (29 U.S.C. 652(5)).

4           (4) The term “heat stress” means the load of  
5 heat that a person experiences due to—

6                 (A) sources of heat or heat retention (in-  
7 cluding the combined contributions of metabolic  
8 heat, environmental factors, and clothing or  
9 personal protective equipment); or

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

11           (5) The term “heat-related illness” means a  
12 material impairment of health that occurs due to  
13 heat stress.

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

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

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

21           (9) The term “worker heat protection stand-  
22 ard” means a standard that regulates employee ex-  
23 posure to heat stress and prevents heat-related ill-  
24 ness and injury by requiring conditions or the adop-  
25 tion or use of one or more practices, means, meth-

- 1 ods, operations, or processes reasonably necessary or
- 2 appropriate to provide employment and places of
- 3 employment that are safe or healthful.

