

2020 Session

HB 805, Employment health and safety standards; heat illness prevention.

Chief Patron: Delegate Jeion A, Ward

<https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+HB805>

Statutory Text: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB805+pdf>

20104780D

HOUSE BILL NO. 805

Offered January 8, 2020

Prefiled January 7, 2020

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

Patrons—Ward and Kory

Referred to Committee on Labor and Commerce

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:

"Acclimatization" means the gradual, temporary adaptation of the body to work in the heat when a person is exposed to heat.

"Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing, and personal protective equipment worn by employees.

"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 exhaustion, heat syncope, and heat stroke.

"Heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

"Landscaping" means providing landscape care and maintenance services or installing trees, shrubs, plants, lawns, or gardens, or providing these services in conjunction with the design of landscape plans.

"Landscaping" includes the construction, installation, or maintenance of walkways, retaining walls, decks, fences, ponds, and similar structures.

"Oil and gas extraction" means operating or developing oil and gas field properties, exploring for crude petroleum or natural gas, mining or extracting of oil or gas, or recovering liquid hydrocarbons from oil or gas field gases.

"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

"Potable water" means water that is suitable for drinking purposes found in Occupational Safety and Health Administration (OSHA) standard 29 C.F.R. 1910.141(a)(2).

"Rest period" means a cool-down period made available to an employee to prevent heat illness.

"Shade" means the complete blockage of direct sunlight that allows the body to cool. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and does not deter or discourage access or use.

B. The Safety and Health Codes Board shall adopt regulations establishing reasonable standards as provided in this section that are designed to protect employees from heat illness while engaged in outdoor work. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all indoor and outdoor places of employment, and to all employers that come within the auspices of the Virginia Occupational Safety and Health (VOSH) Program, except that only employers engaged in the following industries shall be required to comply with the standards established pursuant to subsection E:

1. Agriculture;

2. Construction;

3. Landscaping;

4. Oil and gas extraction; or

5. Transportation or delivery of agricultural products, construction materials, or other heavy materials, including furniture, lumber, freight, cargo, cabinets, and industrial or commercial materials, except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

C. Such standards shall require each employer to provide water as follows:

1. Employees shall be given access, at no cost to themselves, to drinking water in quantities sufficient to maintain adequate levels of hydration at varying levels of heat, using a baseline of one cup

59 of cool water per 15 to 20 minutes, as well as electrolytes if employees are sweating for more than two
60 hours.

61 2. The water shall be located as close as practicable to the areas where employees are working.

62 3. Employers may begin the shift with smaller quantities of water if effective procedures are
63 established for replenishment during the shift as needed.

64 4. The water provided shall be filtered, fresh, pure, suitably cool, and shall be provided to employees
65 free of charge.

66 5. The frequent drinking of water, as described in subdivision I 1 c (3), shall be encouraged.

67 6. The water shall be located as close as practicable to the areas where employees are working and
68 shall not in any event be farther than 400 feet walking distance from an employee's work area.

69 D. Such standards shall require each employer to provide access to shade or climate controlled
70 environment as follows:

71 1. When the temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall ensure
72 there are one or more areas with shade or climate-controlled environment provided and maintained at
73 all times while employees are present that are either open to the air or provided with ventilation or
74 cooling. The amount of shade or climate-controlled environment provided shall be at least enough to
75 accommodate the number of employees on rest periods so that they can sit in a normal posture fully in
76 the shade or climate-controlled environment without having to be in physical contact with each other.

77 The shade or climate-controlled environment shall be located as close as practicable to the areas where
78 employees are working. Subject to the same specifications, the amount of shade or climate-controlled
79 environment present during meal periods shall be at least enough to accommodate the number of
80 employees on the meal period who remain onsite.

81 2. When the temperature in the work area does not exceed 80 degrees Fahrenheit, employers shall
82 either provide shade or a climate-controlled environment in accordance with subdivision 1 or provide
83 timely access to shade or a climate-controlled environment upon an employee's request.

84 3. Employees shall always be allowed and encouraged to take a cool-down rest period in the shade
85 or climate-controlled environment for preventative measures, including but not limited to protecting
86 themselves from overheating. An individual employee who takes a preventative cool-down rest (i) shall
87 be asked if he or she is experiencing symptoms of heat illness; (ii) shall be encouraged to remain in the
88 shade or climate-controlled environment; and (iii) shall not be ordered back to work until any signs or
89 symptoms of heat illness have abated, but in no event less than five minutes in addition to the time
90 needed to access the shade or climate-controlled environment.

91 4. Notwithstanding the provisions of subdivisions 1 and 2, except for employers in the agricultural
92 industry, cooling measures other than shade or climate-controlled environment, including the use of
93 misting machines, may be provided in lieu of shade if the employer is able to demonstrate that these
94 measures are at least as effective as shade in allowing employees to be cooled.

95 E. Such standards shall require each employer, when the temperature equals or exceeds 90 degrees
96 Fahrenheit, to implement high-heat procedures that:

97 1. Ensure that employees are able to contact their supervisor by any effective communication vehicle
98 when necessary.

99 2. Require effectively observing and monitoring employees for signs or symptoms of heat illness by
100 implementing two or more of the following:

101 a. Supervisor or designee observation of 20 or fewer employees;

102 b. Mandatory buddy system;

103 c. Regular communication with sole employee such as by radio or cellphone; or

104 d. Other effective means of observation.

105 3. Designate one or more employees on each worksite as authorized to call for emergency medical
106 services, and if no designated employees are available, allowing other employees to call on their behalf.

107 4. Require reminding employees throughout the work shift to stay properly hydrated.

108 5. For employees employed in agriculture, conduct pre-shift meetings before the commencement of
109 work to review the high heat procedures, encourage employees to drink plenty of water, and remind
110 employees of their right to take a cool-down rest when necessary.

111 F. Such standards shall require each employer to provide rest periods as follows:

112 1. An employer shall provide rest periods away from the hot environment that should range in
113 duration from 15 to 45 minutes per hour, depending on the workplace temperature and worker activity
114 level. At certain wet bulb globe temperatures, work must be stopped entirely.

115 2. If an employer fails to provide a rest period in accordance with this subsection, the employer
116 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
117 each workday that a required rest period is not provided.

118 G. Such standards shall require each employer to implement effective emergency response
119 procedures pursuant to which the employer shall:

120 1. Ensure that effective communication by voice, observation, or electronic means is maintained so

121 that employees at the worksite can contact a supervisor or emergency medical services when necessary.
 122 An electronic device, such as a cellphone or text messaging device, may be used for this purpose only if
 123 reception in the area is reliable.

124 2. Respond to signs and symptoms of possible heat illness if a supervisor observes, or any employee
 125 reports, any signs or symptoms of heat illness in any employee. The supervisor shall take immediate
 126 action commensurate with the severity of the illness, including but not limited to first aid measures and
 127 how emergency medical services will be provided. If they are the employee is exhibiting signs of
 128 symptoms severe enough to indicate heat illness, the employee shall not be sent home without being
 129 offered onsite first aid or provided with emergency medical services.

130 H. Such standards shall require that all employees who commence employment in high-heat
 131 environments, or who will be working in hotter conditions than usual such as during a heat wave, be
 132 gradually acclimatized to the work over a period of between seven and 14 days.

133 I. Such standards shall require each employer to provide effective training that is:

134 1. For employees:

135 a. In a language the supervisor or employee understands;

136 b. Provided to each supervisor and non-supervisory employee before the employee begins work that
 137 may reasonably result in exposure to the risk of heat illness; and

138 c. On the following topics:

139 (1) The environmental and personal risk factors that contribute to or may increase the susceptibility
 140 to heat-related illness, including, but not limited to, medical conditions, water consumption, alcohol use,
 141 use of medications that affect the body's response to the heat, and burden caused by personal protective
 142 equipment;

143 (2) The employer's procedures for complying with the requirements of this standard, including the
 144 employer's responsibility to provide water, shade or climate controlled environment, cool-down rests,
 145 and access to first aid as well as the employees' right to exercise their rights under this standard
 146 without retaliation;

147 (3) The importance of frequent consumption of water, up to four cups per hour, when the work
 148 environment is above 80 degrees and employees are likely sweating more than usual;

149 (4) The importance of acclimatization;

150 (5) The different types of heat illness, the common signs and symptoms of heat illness, and
 151 appropriate first aid and emergency responses to the different types of heat illness;

152 (6) The importance of immediately reporting to the employer, directly or through the employee's
 153 supervisor, symptoms or signs of heat illness in themselves, or in coworkers; and

154 (7) The employer's procedures for responding to signs or symptoms of possible heat illness, including
 155 how emergency medical services will be contacted and provided should they become necessary; and

156 2. For supervisors:

157 a. Provided to supervisors prior to supervising employees performing work that may reasonably
 158 result in exposure to the risk of heat illness; and

159 b. On the following topics:

160 (1) The topics required to be provided to employees listed in subdivision 1 c;

161 (2) The procedures the supervisor is required to follow to implement the applicable provisions in this
 162 section;

163 (3) The procedures the supervisor is require to follow when an employee exhibits signs or reports
 164 symptoms consistent with possible heat illness, including emergency response procedures; and

165 (4) The procedures for moving or transporting an employee to a place where the employee can be
 166 reached by an emergency medical service provider, if necessary.

167 J. The standards established pursuant to this section shall take into consideration the NIOSH
 168 Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published
 169 by the National Institute for Occupational Safety and Health in 2016.

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

172 L. It is a violation of § 40.1-51.2:1 to discharge or discriminate in any other manner against
 173 employees for exercising their rights under this or any other provision offering occupational safety and
 174 health protection to employees.

175 M. A person may bring in an appropriate court of the Commonwealth (i) an action based on a
 176 violation of this section or the regulations hereunder to enjoin such a violation, (ii) an action to recover
 177 actual monetary loss from such a violation, or to receive \$500 in damages for each such violation,
 178 whichever is greater, or (iii) both such actions.

2020 Session

SB 411, Employment health and safety standards; heat illness prevention, definition.

Chief Patron: Senator Ghazala F. Hashmi

<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=SB411>

Statutory Text: <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB411+pdf>

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20104779D

SENATE BILL NO. 411

Offered January 8, 2020

Prefiled January 7, 2020

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

Patron—Hashmi

Referred to Committee on Commerce and Labor

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:

"Acclimatization" means the gradual, temporary adaptation of the body to work in the heat when a person is exposed to heat.

"Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing, and personal protective equipment worn by employees.

"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 exhaustion, heat syncope, and heat stroke.

"Heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

"Landscaping" means providing landscape care and maintenance services or installing trees, shrubs, plants, lawns, or gardens, or providing these services in conjunction with the design of landscape plans.

"Landscaping" includes the construction, installation, or maintenance of walkways, retaining walls, decks, fences, ponds, and similar structures.

"Oil and gas extraction" means operating or developing oil and gas field properties, exploring for crude petroleum or natural gas, mining or extracting of oil or gas, or recovering liquid hydrocarbons from oil or gas field gases.

"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

"Potable water" means water that is suitable for drinking purposes found in Occupational Safety and Health Administration (OSHA) standard 29 C.F.R. 1910.141(a)(2).

"Rest period" means a cool-down period made available to an employee to prevent heat illness.

"Shade" means the complete blockage of direct sunlight that allows the body to cool. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and does not deter or discourage access or use.

"Temperature" means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer to measure the outdoor temperature in an area where there is no shade.

B. The Safety and Health Codes Board shall adopt regulations establishing reasonable standards as provided in this section that are designed to protect employees from heat illness while engaged in outdoor work. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all outdoor places of employment, except that only employers engaged in the following industries shall be required to comply with the standards established pursuant to subsection E:

1. Agriculture;

2. Construction;

3. Landscaping;

4. Oil and gas extraction; or

5. Transportation or delivery of agricultural products, construction materials, or other heavy materials, including furniture, lumber, freight, cargo, cabinets, and industrial or commercial materials, except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

C. Such standards shall require each employer to provide water as follows:

1. Employees shall be permitted to have access to potable drinking water at all times.

2. The water shall be located as close as practicable to the areas where employees are working.

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59 3. Where drinking water is not plumbed or otherwise continuously supplied, it must be provided in
60 sufficient quantity, from the beginning to the end of the work shift, to supply at least one quart of
61 drinking water per employee per hour.

62 4. Employers may begin the shift with smaller quantities of water if effective procedures are
63 established for replenishment during the shift as needed.

64 5. The water provided shall be filtered, fresh, pure, suitably cool, and shall be provided to employees
65 free of charge.

66 6. The frequent drinking of water, as described in subdivision I 1 c (3), shall be encouraged. The
67 water shall be located as close as practicable to the areas where employees are working and shall not
68 in any event be farther than 400 feet walking distance from an employee's work area.

69 D. Such standards shall require each employer to provide access to shade as follows:

70 1. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer
71 shall ensure there are one or more areas with shade provided and maintained at all times while
72 employees are present that are either open to the air or provided with ventilation or cooling. The
73 amount of shade provided shall be at least enough to accommodate the number of employees on rest
74 periods, so that they can sit in a normal posture fully in the shade without having to be in physical
75 contact with each other. The shade shall be located as close as practicable to the areas where
76 employees are working. Subject to the same specifications, the amount of shade present during meal
77 periods shall be at least enough to accommodate the number of employees on the meal period who
78 remain onsite.

79 2. When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit, employers
80 shall either provide shade in accordance with subdivision 1 or provide timely access to shade upon an
81 employee's request.

82 3. Employees shall always be allowed and encouraged to take a cool-down rest period in the shade
83 for preventative measures, including but not limited to protecting themselves from overheating. An
84 individual employee who takes a preventative cool-down rest (i) shall be asked if the employee is
85 experiencing symptoms of heat illness; (ii) shall be encouraged to remain in the shade; and (iii) shall
86 not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event
87 less than five minutes in addition to the time needed to access the shade.

88 4. Notwithstanding the provisions of subdivisions 1 and 2, except for employers in the agricultural
89 industry, cooling measures other than shade, including the use of misting machines, may be provided in
90 lieu of shade if the employer is able to demonstrate that these measures are at least as effective as
91 shade in allowing employees to be cooled.

92 E. Such standards shall require each employer, when the temperature equals or exceeds 90 degrees
93 Fahrenheit, to implement high-heat procedures that:

94 1. Ensure that employees are able to contact their supervisor by any effective communications
95 vehicle when necessary.

96 2. Require effectively observing/monitoring employees for signs or symptoms of heat illness by
97 implementing two or more of the following:

98 a. Supervisor or designee observation of 20 or fewer employees;

99 b. Mandatory buddy system;

100 c. Regular communication with sole employee such as by radio or cellphone; or

101 d. Other effective means of observation.

102 3. Designate one or more employees on each worksite as authorized to call for emergency medical
103 services, and if no designated employees are available, allowing other employees to call on their behalf.

104 4. Require reminding employees throughout the work shift to stay properly hydrated.

105 5. For employees employed in agriculture, conduct pre-shift meetings before the commencement of
106 work to review the high heat procedures, encourage employees to drink plenty of water, and remind
107 employees of their right to take a cool-down rest when necessary.

108 F. Such standards shall require each employer to provide rest periods as follows:

109 1. An employer shall authorize, permit, and ensure that all employees take a rest period of five
110 minutes for every hour worked. An employer shall not require an employee to work during a rest
111 period. A rest period shall be counted as hours worked, for which there shall be no deduction from
112 wages.

113 2. When temperatures reach 90 degrees or above, the employer shall ensure that the employee takes
114 a minimum five-minute rest period every half hour.

115 3. If an employer fails to provide a rest period in accordance with this subsection, the employer
116 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
117 each workday that a required rest period is not provided.

118 G. Such standards shall require each employer to implement effective emergency response
119 procedures pursuant to which the employer shall:

120 1. Ensure that effective communication by voice, observation, or electronic means is maintained so

121 that employees at the worksite can contact a supervisor or emergency medical services when necessary.
 122 An electronic device, such as a cellphone or text messaging device, may be used for this purpose only if
 123 reception in the area is reliable.

124 2. Respond to signs and symptoms of possible heat illness if a supervisor observes, or any employee
 125 reports, any signs or symptoms of heat illness in any employee. The supervisor shall take immediate
 126 action commensurate with the severity of the illness, including but not limited to first aid measures and
 127 how emergency medical services will be provided. If they are the employee is exhibiting signs of
 128 symptoms severe enough to indicate heat illness, the employee shall not be sent home without being
 129 offered onsite first aid or provided with emergency medical services.

130 H. Such standards shall require each employer to provide for acclimatization as follows:

131 1. All employees shall be closely observed by a supervisor during a heat wave. For purposes of this
 132 subdivision only, "heat wave" means any day in which the predicted high temperature for the day will
 133 be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily
 134 temperature in the preceding five days.

135 2. An employee who has been newly assigned to a high heat area shall be closely observed by a
 136 supervisor or designee for the first 14 days of the employee's employment.

137 I. Such standards shall require each employer to provide effective training that is:

138 1. For employees:

139 a. In a language the supervisor or employee understands;

140 b. Provided to each supervisor and non-supervisory employee before the employee begins work that
 141 may reasonably result in exposure to the risk of heat illness; and

142 c. On the following topics:

143 (1) The environmental and personal risk factors that contribute to or may increase the susceptibility
 144 to heat-related illness, including, but not limited to, medical conditions, water consumption, alcohol use,
 145 use of medications that affect the body's response to the heat, and burden caused by personal protective
 146 equipment;

147 (2) The employer's procedures for complying with the requirements of this standard, including the
 148 employer's responsibility to provide water, shade, cool-down rests, and access to first aid, as well as the
 149 employees' right to exercise their rights under this standard without retaliation;

150 (3) The importance of frequent consumption of water, up to four cups per hour, when the work
 151 environment is above 80 degrees and employees are likely sweating more than usual;

152 (4) The importance of acclimatization;

153 (5) The different types of heat illness, the common signs and symptoms of heat illness, and
 154 appropriate first aid and emergency responses to the different types of heat illness;

155 (6) The importance of immediately reporting to the employer, directly or through the employee's
 156 supervisor, symptoms or signs of heat illness in themselves, or in coworkers; and

157 (7) The employer's procedures for responding to signs or symptoms of possible heat illness, including
 158 how emergency medical services will be contacted and provided should they become necessary; and

159 2. For supervisors:

160 a. Provided to supervisors prior to supervising employees performing work that may reasonably
 161 result in exposure to the risk of heat illness; and

162 b. On the following topics:

163 (1) The topics required to be provided to employees listed in subdivision 1 c;

164 (2) The procedures the supervisor is required to follow to implement the applicable provisions in this
 165 section;

166 (3) The procedures the supervisor is required to follow when an employee exhibits signs or reports
 167 symptoms consistent with possible heat illness, including emergency response procedures; and

168 (4) The procedures for moving or transporting an employee to a place where the employee can be
 169 reached by an emergency medical service provider, if necessary.

170 J. The standards established pursuant to this section shall take into consideration the NIOSH
 171 Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published
 172 by the National Institute for Occupational Safety and Health in 2016.

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

175 L. It is a violation of § 40.1-51.2:1 to discharge or discriminate in any other manner against
 176 employees for exercising their rights under this or any other provision offering occupational safety and
 177 health protection to employees.

**Department of Planning and Budget
2020 Fiscal Impact Statement**

1. Bill Number: SB411

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Hashmi

3. Committee: Commerce and Labor

4. Title: Employment health and safety standards; heat illness prevention.

5. Summary: This bill requires the Safety and Health Codes Board to adopt regulations establishing reasonable standards designed to protect employees from heat illness. The measure directs the standards to require employers to provide water, shade, rest periods, training, and emergency response procedures. The standards are also directed to require employers in certain industries to implement high-heat procedures when the temperature is 90 degrees Fahrenheit or warmer. The measure requires employers to pay employees one additional hour of pay at his regular compensation for each workday that it fails to provide the employee with five-minute rest period every hour or every half hour if the temperature is 90 degrees Fahrenheit or warmer.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary, see item 8.

8. Fiscal Implications: It is anticipated that this bill will result in a fiscal impact to the Department of Labor and Industry (DOLI), which can be absorbed within existing resources. DOLI indicates that this bill will result in expenditures associated with the Safety and Health Codes Board adopting heat illness prevention regulations, education efforts to inform the regulated community of such new standards, and enforcement of the regulations.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

2020 Session

HB 1610, Employment health and safety standards; heat illness prevention.

Chief Patron: Delegate Martha M. Mugler

<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1610>

Statutory Text: <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB1610+pdf>

Impact Statement: <https://lis.virginia.gov/cgi-bin/legp604.exe?201+oth+HB1610F122+PDF>

20103161D

HOUSE BILL NO. 1610

Offered January 16, 2020

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

Patron—Mugler

Referred to Committee on Labor and Commerce

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:

"Acclimatization" means the gradual, temporary adaptation of the body to work in the heat when a person is exposed to heat.

"Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing, and personal protective equipment worn by employees.

"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 exhaustion, heat syncope, and heat stroke.

"Heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

"Shade" means blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

"Temperature" means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer to measure the outdoor temperature in an area where there is no shade. While the temperature measurement must be taken in an area with full sunlight, the bulb or sensor of the thermometer should be shielded from direct contact by sunlight, for example, with the hand or some other object, while taking the measurement.

B. The Safety and Health Codes Board shall adopt regulations establishing reasonable standards designed to protect employees from heat illness while engaged in outdoor work. Such standards shall require each employer:

1. When the temperature equals or exceeds 80 degrees Fahrenheit, to:

a. Provide employees with access to potable drinking water that is fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water shall be encouraged; and

b. While employees are present, maintain one or more areas with shade at all times that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other. The shade shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite. Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times while employees are present. An individual employee who takes a preventative cool-down rest (i) shall be

59 monitored and asked if he is experiencing symptoms of heat illness; (ii) shall be encouraged to remain
60 in the shade; and (iii) shall not be ordered back to work until any signs or symptoms of heat illness
61 have abated, but in no event less than five minutes in addition to the time needed to access the shade. If
62 an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool-down
63 rest or during a preventative cool-down rest period, the employer shall provide appropriate first aid or
64 emergency response. If an employer can demonstrate that it is infeasible or unsafe to have a shade
65 structure, or otherwise to have shade present on a continuous basis, the employer may utilize alternative
66 procedures for providing access to shade if the alternative procedures provide equivalent protection.
67 Except for employers in the agricultural industry, cooling measures other than shade, such as the use of
68 misting machines, may be provided in lieu of shade if the employer can demonstrate that these measures
69 are at least as effective as shade in allowing employees to cool;

70 2. When the temperature equals or exceeds 95 degrees Fahrenheit, to:

71 a. Ensure that effective communication by voice, observation, or electronic means is maintained so
72 that employees at the worksite can contact a supervisor when necessary. An electronic device, such as a
73 cell phone or text messaging device, may be used for this purpose only if reception in the area is
74 reliable. The employer shall ensure effective employee observation or monitoring by implementing one
75 or more of the following:

- 76 (1) Observation by a supervisor or his designee of 20 or fewer employees;
- 77 (2) Mandatory buddy system;
- 78 (3) Regular communication with sole employee such as by radio or cellular phone; or
- 79 (4) Other effective means of observation;

80 b. Designate one or more employees on each worksite as authorized to call for emergency medical
81 services and allow other employees to call for emergency services when no designated employee is
82 available;

83 c. Remind employees throughout the work shift to drink plenty of water;

84 d. Conduct pre-shift meetings before the commencement of work to review the high heat procedures,
85 encourage employees to drink plenty of water, and remind employees of their right to take a cool-down
86 rest when necessary; and

87 e. Ensure that the employee takes a minimum paid 10-minute net preventative cool-down rest period
88 every two hours. The preventative cool-down rest period may be provided concurrently with any other
89 meal or rest period provided by the employer if the timing of the preventative cool-down rest period
90 coincides with a required meal or rest period, thus requiring no additional preventative cool-down rest
91 period in an eight-hour workday. If the workday will extend beyond eight hours, then an additional
92 preventative cool-down rest period will be required at the conclusion of the eighth hour of work, and if
93 the workday extends beyond 10 hours, then another preventative cool-down rest period will be required
94 at the conclusion of the tenth hour;

95 3. To implement effective emergency response procedures that (i) ensure that effective communication
96 by voice, observation, or electronic means is maintained so that employees at the worksite can contact a
97 supervisor or emergency medical services when necessary and (ii) respond to signs and symptoms of
98 possible heat illness, including first aid measures and how emergency medical services will be provided;

99 4. During a heat wave, to ensure that its employees are closely observed by a supervisor or his
100 designee;

101 5. To provide its employees with effective training in the following topics before the employee begins
102 work that should reasonably be anticipated to result in exposure to the risk of heat illness:

103 a. The environmental and personal risk factors for heat illness, as well as the added burden of heat
104 load on the body caused by exertion, clothing, and personal protective equipment;

105 b. The employer's procedures for complying with the requirements of this standard, including, but not
106 limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid;

107 c. The importance of frequent consumption of small quantities of water, up to four cups per hour,
108 when the work environment is hot and employees are likely to be sweating more than usual in the
109 performance of their duties;

110 d. The concept, importance, and methods of acclimatization;

111 e. The different types of heat illness, the common signs and symptoms of heat illness, appropriate
112 first aid and emergency responses to the different types of heat illness, and the potentially rapid
113 progress of heat illness from mild symptoms and signs to serious and life-threatening illness;

114 f. The importance to employees of immediately reporting to the employer, directly or through the
115 employee's supervisor, symptoms or signs of heat illness in themselves, or in coworkers;

116 g. The employer's procedures for responding to signs or symptoms of possible heat illness, including
117 how emergency medical services will be provided should they become necessary;

118 h. The employer's procedures for contacting emergency medical services, and if necessary, for
119 transporting employees to a point where they can be reached by an emergency medical service provider;
120 and

- 121 *i. The employer's procedures for ensuring that, in the event of an emergency, clear and precise*
122 *directions to the worksite can and will be provided as needed to emergency responders. These*
123 *procedures shall include designating a person to be available to ensure that emergency procedures are*
124 *invoked when appropriate;*
- 125 *6. To provide to supervisors, prior to supervising employees performing work that should reasonably*
126 *be anticipated to result in exposure to the risk of heat illness, effective training on the following topics:*
- 127 *a. The information required to be provided by subdivision 5;*
128 *b. The procedures the supervisor is to follow to implement the applicable provisions of this section;*
129 *c. The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms*
130 *consistent with possible heat illness, including emergency response procedures; and*
131 *d. How to monitor weather reports and how to respond to hot weather advisories; and*
- 132 *7. To establish, implement, and maintain an effective heat illness prevention plan. The plan shall be*
133 *in writing in both English and the language other understood by the majority of the employees and shall*
134 *be made available at the worksite to employees and to representatives of the Division upon request. The*
135 *heat illness prevention plan shall, at a minimum, contain:*
- 136 *a. Procedures for the provision of water and access to shade;*
137 *b. The high heat procedures;*
138 *c. Emergency response procedures; and*
139 *d. Acclimatization methods and procedures.*
- 140 *C. The rules and regulations adopted by the Safety and Health Codes Board pursuant to this section*
141 *shall be enforced as specified in §§ 40.1-49.3 through 40.1-49.7.*

**Department of Planning and Budget
2020 Fiscal Impact Statement**

1. Bill Number: HB1610

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Mugler

3. Committee: Labor and Commerce

4. Title: Employment health and safety standards; heat illness prevention.

5. Summary: This bill requires the Safety and Health Codes Board to adopt regulations establishing reasonable standards designed to protect employees from heat illness while engaged in outdoor work. The measure directs the standards to require employers to provide water, shade, 10-minute rest periods, training, observation or monitoring, and emergency response procedures and to adopt and maintain a heat illness prevention plan.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary, see item 8.

8. Fiscal Implications: It is anticipated that this bill will result in a fiscal impact to the Department of Labor and Industry (DOLI), which can be absorbed within existing resources. DOLI indicates that this bill will result in expenditures associated with the Safety and Health Codes Board adopting heat illness prevention regulations, education efforts to inform the regulated community of such new standards, and enforcement of the regulations.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

2021 Session

HB 1785, Employment health and safety standards; heat illness prevention.

Chief Patron: Delegate Jeion A, Ward

<https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+HB1785>

Statutory Text: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB1785+pdf>

Impact Statement: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+oth+HB1785F122+PDF>

21101346D

HOUSE BILL NO. 1785
Offered January 13, 2021
Prefiled December 31, 2020

A BILL to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to employment health and safety standards; heat illness prevention.

Patrons—Ward and Kory

Referred to Committee on Labor and Commerce

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, "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 exhaustion, heat syncope, and heat stroke.

B. The Safety and Health Codes Board shall adopt regulations establishing standards as provided in this section that are designed to protect employees from heat illness in indoor and outdoor work.

C. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all indoor and outdoor places of employment and to all employers that come within the jurisdiction of the Virginia Occupational Safety and Health (VOSH) Program.

D. The standards established pursuant to this section shall take into consideration Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health (NIOSH).

E. Such standards shall contain requirements for provision of drinking water, access to shade or climate-controlled environments, rest periods, effective emergency response procedures, acclimatization to working in heat, training to employees and supervisors, and other standards related to heat illness protection.

F. In addition to any penalties provided by this title, and without regard to any exhaustion of alternative administrative remedies provided for in this title, an employee may bring in an appropriate court of the Commonwealth (i) an action based on a violation of this section or the regulations hereunder to enjoin such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (ii) both such actions in clause (i). An employee who brings suit and prevails under this section shall be entitled to reasonable attorney fees and costs. If the court finds that the employer knowingly violated the standards, the court shall award the employee an amount equal to triple the amount of damages due under clause (ii) and reasonable attorney fees and costs.

INTRODUCED

HB1785

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB1785

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Ward

3. Committee: Labor and Commerce

4. Title: Employment health and safety standards; heat illness prevention.

5. Summary: Requires the Safety and Health Codes Board to adopt regulations establishing standards designed to protect employees from heat illness, defined in the bill. The measure authorizes an employee to bring an action based on a violation of such standards in which injunctive relief and monetary damages may be sought.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary. See item 8.

8. Fiscal Implications: It is anticipated that any fiscal impact on the Department of Labor and Industry (DOLI) as a result of this bill can be absorbed within existing resources. According to DOLI, the Safety and Health Codes Board has responsibility for adopting such a regulation. Any expenditure impact associated with the development of such a regulation community education, and enforcement can be absorbed by DOLI.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry; Courts

10. Technical Amendment Necessary: No.

11. Other Comments: None.

2021 Session

SB 1358, Employment health and safety standards; heat illness prevention.

Chief Patron: Senator Ghazala F. Hashmi

<https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1358>

Statutory Text: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+SB1358+pdf>

Impact Statement: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+oth+SB1358F122+PDF>

21101769D

SENATE BILL NO. 1358

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to employment health and safety standards; heat illness prevention.

Patron—Hashmi

Referred to Committee on Commerce and Labor

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, "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 exhaustion, heat syncope, and heat stroke.

B. The Safety and Health Codes Board shall adopt regulations establishing standards as provided in this section that are designed to protect employees from heat illness in indoor and outdoor work.

C. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all indoor and outdoor places of employment and to all employers that come within the jurisdiction of the Virginia Occupational Safety and Health (VOSH) Program.

D. The standards established pursuant to this section shall take into consideration Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health (NIOSH).

E. Such standards shall contain requirements for provision of drinking water, access to shade or climate-controlled environments, rest periods, effective emergency response procedures, acclimatization to working in heat, training to employees and supervisors, and other standards related to heat illness protection.

F. In addition to any penalties provided by this title, and without regard to any exhaustion of alternative administrative remedies provided for in this title, an employee may bring in an appropriate court of the Commonwealth (i) an action based on a violation of this section or the regulations hereunder to enjoin such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (ii) both such actions in clause (i). An employee who brings suit and prevails under this section shall be entitled to reasonable attorney fees and costs. If the court finds that the employer knowingly violated the standards, the court shall award the employee an amount equal to triple the amount of damages due under clause (ii) and reasonable attorney fees and costs.

INTRODUCED

SB1358

**Department of Planning and Budget
2021 Fiscal Impact Statement**

1. Bill Number: SB1358

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Hashmi

3. Committee: Commerce and Labor

4. Title: Employment health and safety standards; heat illness prevention.

5. Summary: Requires the Safety and Health Codes Board to adopt regulations establishing standards designed to protect employees from heat illness, defined in the bill. The measure authorizes an employee to bring an action based on a violation of such standards in which injunctive relief and monetary damages may be sought.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary. See item 8.

8. Fiscal Implications: It is anticipated that any fiscal impact on the Department of Labor and Industry (DOLI) as a result of this bill can be absorbed within existing resources. According to DOLI, the Safety and Health Codes Board has responsibility for adopting such a regulation. Any expenditure impact associated with the development of such a regulation community education, and enforcement can be absorbed by DOLI.

9. Specific Agency or Political Subdivisions Affected: Department of Labor and Industry; Courts

10. Technical Amendment Necessary: No.

11. Other Comments: As introduced, this bill is a companion to HB1785.