



NJ Gasoline, C-Store, Automotive Association
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To: Assembly Labor Committee

From: Eric Blomgren, Chief Administrator & Director of Government Affairs

New Jersey Gasoline, Convenience Store, Automotive Association

Re: Oppose, A-3521 “Establishes occupational heat stress standard and ‘Occupational Heat-Related Illness and Injury Prevention Program’ in DOLWD.”

On behalf of the small businesses in the motor fuel retail and auto repair industries, we must respectfully oppose this bill as currently drafted. It overly regulates small facilities in ways that will bring disruptions and cost increases.

Our chief concern with the language of the bill is the various requirements that would force these small businesses to have more employees on-site on certain days (often with little notice), or effectively shut down operations for at least part of the day. Our members are small businesses, and they continue to have trouble finding enough employees currently, whether it’s for the basic service of pumping gas or the skilled workers needed to work as auto repair technicians. A site with only one or two employees working to begin with could be forced to either cease operations during the mandatory paid rest breaks (at a frequency to be determined later) or else increase payroll costs as much as 100%.

Section 3.c.(7)(b) requires more staffing to be available on hot days. Section 15.a.(2) also says the employer shall reduce shifts and increase the total number of workers. What if the shift is only 4 hours to begin with? What if the employee wants to work or needs to work a full shift because they are relying on that income? What if the employee is working outdoors but entirely in the shade? Could there be different standards for different types of work? Heavy construction work in the sun needing a more substantial break than walking between gas pumps in the shade, for example. Perhaps instead of a paid break, allow the employee to be shifted to light work in an air-conditioned environment, if available.

As we were all reminded during the covid-19 outbreak and the aftermath of Superstorm Sandy, gas stations are one of the most essential services. Unlike every other state now, there remains a legal mandate that gasoline cannot be purchased by consumers unless an attendant pumps it for them. Most stations, particularly the vast majority operated by an independent or small owner, only have one attendant working at a time, either because of availability or cost. If that employee, doing light work in the shade, is on a mandatory break then gasoline will no longer be available for sale at that location for that time period, much to the annoyance of the motoring public who

could perform the basic service themselves. While we continue to support a change to that law, in the absence of that the bill should allow for the suspension of this mandate during days when there is excessive heat, as well as perhaps any other mandates that require staffing working outdoors. When Oregon had a full-serve mandate in effect, on at least two occasions officials there suspended the law during a period of excessive heat.

For years there has been a shortage of trained auto repair techs, and many repair shops have fewer than 5 employees total. Even if they wanted to find another employee to do the work they would not be capable of doing so. Repair shops may be indoors, but they also have the ability to open their bay doors and effectively have an entire wall open to the outside to help with air circulation.

Artificially requiring more workers be on site will just increase the cost of gas and vehicle repairs, at a time of increasing costs across the economy. **Exempting small job sites with only a few employees working in non-climate-controlled environments would also address our concerns.**

We also have concerns with the language around penalties. The rebuttable presumption of guilt is unfair to employers. If an employee mentions offhand they are concerned that it is hot out, and then their shift schedule gets changed 85 days later for genuine business reasons, they can claim it was discrimination under this law and the employer now needs to prove their innocence. Employers can be fined for providing water at a temperature of 61 degrees. Employees will now also have a private right of action to sue their employer over a perceived violation, in addition to penalties from the Department of Labor. The high cost of legal fees may be enough to force an employer to settle a bogus claim as a way to minimize costs. The ability of the Labor Commissioner to issue a stop work order for a violation of this bill, for every single site location (even those which could be in compliance with the bill), with the employer being required to pay all affected employees regular wages, is too expansive and expensive and effectively blackmails employers to plead guilty even if they are innocent, just to get back to business. Furthermore, threats of jail time because an employer lost their copy of their heat plan from 5 years ago is also too excessive.

I would also note that the effective date is not practical. There are requirements, including staffing requirements, that employers would be forced to make the moment the Governor were to sign it. It takes time to even get the word out that a proposed and long discussed bill has officially become law, much less to be hiring new employees and changing work schedules. While amendments made in the Senate Labor Committee gave 30 days to develop a heat plan (which is still not enough to both develop and implement), Section 15 still requires employers to immediately make changes, including to reduce shifts and bring in more employees.

Finally, amendments made in the Senate Labor Committee lowered the default heat threshold from 90 degrees to 80 degrees. This represents a significant expansion of the bill. While heat index is slightly different than the high temperature of the day, they are of course closely correlated. On average over the last four years, there were 38 days in Newark and 27 days in Mt. Holly in which the high temperature was 90 degrees or above. There were 108 days in Newark and 100 days in Mt. Holly in which in the temperature was over 80, meaning this change effectively triples the coverage of the mandates, and puts well over a quarter of the calendar year under the mandates set by the bill.

It's also unclear where and how the temperature is set. Is it by forecast? Is it what the National Weather Service says the temperature and humidity is in a specific location at that moment? Is it by a thermometer on location, and if so what if that thermometer is directly in sunlight or directly in shade? What if the employer and an employee disagree on what the temperature is where and when?

While I can see how there may be some industries/work environments that would benefit from some additional protections; the current language is too broad to govern every type of employer who has someone who works outside at some point in the day.

We ask that you not move forward with the bill at this time. Thank you.

