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BECAUSE AGRICULTURE MATTERS!

To: Senator Cryan and Assemblywoman Quijano, bill sponsors and interested Legislators
From: Allen Carter, NJFB President
Date: 22 May 2024
Subject: S2422/A5137 opposition to the heat stress bill

We thank you for your time and attention to this important bill and the nuances of our essential industry, which serves to provide the Garden State with local food security. This letter's purpose is to follow up on our Assembly committee testimony on May 16th and meeting with Senator Cryan on May 17th.

Using a **heat index of 80 degrees Fahrenheit** is unduly burdensome and unnecessary as the effects of heat stress are not seen until a much higher degree, and even then, it is manageable with the proper precautions. In essence, this marker sets to encompass the entire summer and part of both spring and fall, the vast majority of New Jersey's growing season.

A 30-day window for farmers to create their heat plans, on a bill enacted in the middle of their busiest season, is extremely unfair and unrealistic. Farmers already have standard operating procedures that serve the intent of the bill, keeping their workers healthy and safe from the heat, and have proven over the years that lengthy reports and onerous data collection and management are not what is required.

Pg 4 lines 19-23

...implementation of a heat alert program to provide notification to employees when the National Weather Service forecasts that a heat wave is likely to occur in the following day or days, and when that notification occurs, also taking the following actions:

This is nearly impossible as all employees do not have devices to receive notifications, and what is the definition of a heat wave?

Page 4 lines 24-25

(a) postponing tasks that are non-essential until the excessive heat condition subsides;
This is an essential industry with perishable crops and live animals. Plants need to be tended to and harvested within certain timelines, and livestock requires extra attention during periods of high heat.

Page 4 lines 26-27

(b) increasing the total number of workers to reduce the heat exposure of each worker;

This is unattainable with the current worker shortage, especially in an industry that utilizes foreign worker visas and is responsible for the housing and transportation of such workers. Housing is not large enough to accommodate extra workers and these visas are secured months in advance (making it completely impossible for this growing season).

Page 4 lines 45-46

(c) personal protective equipment, including water-cooled garments, air-cooled garments, reflective clothing, and cooling vests;

Standard clothing for field work includes light material long-sleeve shirts and wide-brimmed hats for sun protection. This language is vague as to what PPE is required when and in which industries.

Page 5 lines 1-3

(8) coordinating risk assessment efforts, plan development, and implementation with other employers who have employees who work at the same work site;

How would this be possible if workers are employed at multiple farms in the area?

Page 5 lines 7-10

d. The heat-related illness and injury prevention plan referred to in subsection a. of this section shall contain at a minimum annual training and education to employees who may be exposed to high heat levels, including training and education regarding the following:

The training and education component includes two separate training requirements for workers and supervisors and must be completed annually in all languages spoken at the workplace. Workers often work for multiple farms so does training have to occur at each place of employment? Does the training have to be verbal because it must allow interaction with the worker rather than showing a video? The training also requires a trainer that with knowledge of heat-related illness prevention, therefore what defines a knowledgeable trainer?

Page 6 line 9-23

g. A requirement that each employer shall maintain the following:

(1) records related to the heat-related illness and injury prevention plan referred to in subsection a. of this section, including heat-related illness risk and hazard assessments and identification, evaluation, correction and training procedures;

(2) data on all heat-related illnesses, injuries and fatalities that have occurred at the place of employment, including but not limited to: the type of heat-related illness or injury experienced and symptoms experienced, the cause of death, the time at which manifestation of illness, injury, or death occurred, environmental measures, including temperature and humidity levels, at time of manifestation of illness, injury or death, a description of the location where the manifestation of illness, injury or death occurred; and

(3) data on environmental and physiological measurements related to heat.

The bill requires records to be kept on all illnesses and deaths that may be related to heat stress. The main concern is the requirement that detailed records be maintained about all environmental and physiological conditions (with no explanation of what this entails). Additionally, the requirement that all records be maintained for six years is excessive and unnecessary.

Page 9 lines 3-4

...fines of not less than \$500 and not more than \$5,000 per employee employed at or during the time of the violation,

This egregious enforcement action for lack of excessive paperwork and per employee assessment could in essence put most farmers in our state OUT OF BUSINESS.

Page 10 lines 4-12

“...shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation within 365 days following the establishment of rules by the commissioner, be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, shall be punished by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not less than 10 nor more than 100 days, or by both the fine and imprisonment.

This is an unreasonable punishment of employers who act in good faith to protect their workers while serving our state as an essential industry by providing local food security.

Page 9 lines 9-15

14. a. It shall be a violation of this act for an employer to retaliate through termination of employment, discipline, or in any other manner against any employee for exercising any rights granted by this act. There shall be a rebuttable presumption of unlawful retaliation under this section whenever an employer takes adverse action against an employee within 90 days of when that employee exercises the employee’s rights protected under this act.

The employer is immediately presumed guilty for any action taken against an employee and will be subject to expensive litigation. The inclusion of private right of action under this bill makes it difficult for agricultural employers to defend themselves in court and will therefore be forced to settle. This inequitable procedure is entirely unacceptable.

Page 11 line 45

13. The statute of limitations under this act shall be six years after the alleged cause of action accrues.

The mandate for the statute of limitations to extend to six years with no explanation or reason is excessive and subjects employers to arbitrary litigation.

When the Washington State Department of Labor and Industries created regulations for heat stress in the workplace, they issued a **Final Cost-Benefit Analysis & Significant Legislative Rule Analysis**. We have yet to see this for the industries that are to be impacted in New Jersey because of this legislation. Please do not proceed until we have all the necessary data on the **cost of compliance**.

NJFB supports an interagency effort between the New Jersey Departments of Agriculture, Labor and Workforce Development, and Health (NJDA, NJDOL and NJDOH) when it comes to protecting our agricultural labor force from the effects of heat stress. S2422/A3521, which would take a one-size-fits-all approach to all industries across the state when creating a heat-related illness and injury protection program within the NJDOL, would be an **impractical and virtually unimplementable program for agriculture**. The New Jersey Agricultural Experiment Station (NJAES) has been educating farmers and their workforce on heat stress for decades and is currently in the middle of another round of outreach, which includes educational sessions and materials for distribution. Additionally, the NJDOH recently released a fact sheet in both English and Spanish providing guidance on identifying heat stress in agriculture as well as how to prevent it. The farm industry will also be subject to the upcoming federal OSHA standards for heat stress in agricultural settings. **Any need for further employee advisories should be delegated to a jointly developed NJDA-NJDOL-DOH guidance plan that draws upon the farm management expertise of the NJAES resources at Rutgers University.**

For the above stated and other reasons, we must respectfully oppose this proposed legislation.

Thank you for your consideration and this opportunity to comment.

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cc: Office of the Governor
State Board of Agriculture