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Hon. Walker Thomas
Legislative Research Commission
Capitol Annex
700 Capital Avenue Loop
Frankfort, KY 40601

Subject: Education and Labor Cabinet Concerns on HB 398 – AN ACT relating to Occupational Safety and Health.

Dear Representative Thomas:

As the Commonwealth's enforcement authority for employee occupational safety and health, the Department of Workplace Standards Occupational Safety and Health (OSH) Program within the Education and Labor Cabinet (ELC) has serious concerns regarding the negative impact of House Bill 398. As Cabinet Secretary, I have serious financial and programmatic concerns about the far-reaching implications this bill will have for Kentucky's OSH Program.

Congress passed the Occupational and Safety Health Act (Act), 29 U.S.C. § 651, et seq., in 1970 to "... assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resource[.]" See 29 U.S.C. 651(b). In 1972, the Kentucky General Assembly stated it is Kentucky's policy to "... promote the safety, health and general welfare of its people by preventing any detriment to the safety and health of all employees, both public and private ... arising out of exposure to harmful conditions and practices at places of work."

With ELC's duty to uphold the occupational safety and health of all Kentucky workers in mind, I share the following concerns about House Bill 398:

- Section 1 adds "qualified representative" to the chapter's definitions in KRS 338.015. The term "qualified" is not defined, setting up legal challenges in this already litigious area of the program.
- Section 2 prohibits ELC from enforcing state-specific safety standards. Kentucky's workforce and industries, including tourism, would lose protections and guidance in areas such as high voltage electrical lines, bulk hazardous liquid unloading, and employee exposures to hazardous materials protections should state-specific OSH regulations be revoked.

- Section 3 amends KRS 338.091 to allow the Franklin Circuit Court to award expenses incurred, such as court costs and attorney’s fees, against OSH Compliance. No caps are part of the legislation, which creates substantial financial exposure for Kentucky taxpayers.
- Section 4 of KRS 338.111 is not compliant with the federal standard because it provides a mandatory right for the employer to have a presence during physical inspection. Although this is current OSH practice, Section 4 strips the ability to inspect an imminent danger without employer presence.
- Section 5 revises KRS 338.121 to allow the employer, not the employee, the power to delegate an employee’s qualified representative. This does not meet federal protections and exposes the Kentucky plan to federal sanctions for noncompliance.
- Section 5 amends KRS 338.121 to limit an employee’s right to file a discrimination complaint to 30 days and does not recognize an employer’s ability to use stall tactics to delay a now mandatory OSH finding within six months.
- Section 5 also amends KRS 338.121 to only allow an employee or a qualified representative to request a safety inspection, which strips away the ability of a parent or spouse in dismemberment and fatality cases to issue a request on a family member’s behalf.
- Section 6 includes new language in KRS 338.141 regarding *de minimus* violations. OSH does not issue *de minimus* violations and there is no reference to them under the KRS 338.991 penalty statute.
- Section 6 amends KRS 338.141 to require OSH issue citations within six months with no exemptions. While six months is already OSH’s policy, no exemptions for complex cases can lead to negative results for employees and employers.
- Section 6 adds to KRS 338.141 that each citation must be written “with particularity,” which will likely result in legal challenges to define what this means.

These issues need to be thoroughly addressed to ensure the Commonwealth retains its longstanding safety and health standards that protect Kentucky workers.

The Education and Labor Cabinet welcomes the opportunity to discuss these concerns with you and offer alternative solutions that may better address the underlying issues without the unintended consequences of HB 398.

Sincerely,



Jamie Link, Secretary
Education and Labor Cabinet