



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**WORKER'S COMP: EXEMPT LLC  
OWNER/EMPLOYEES**

**House Bill 4848 (Substitute H-1)  
First Analysis (5-23-95)**

**Sponsor: Rep. Walter J. DeLange  
Committee: Human Resources & Labor**

***THE APPARENT PROBLEM:***

The Worker's Disability Compensation Act generally requires all employers to buy worker's compensation disability insurance for their employees. However, the act does allow three kinds of employees to be excluded from these insurance requirements: (1) named partners; (2) the spouse, child(ren), or parents of an employer; and (3) employees of corporations with not more than 10 stockholders who also are officers and stockholders who own at least ten percent of the stock of the corporation. Last session, the legislature enacted Public Act 23 of 1993 (enrolled House Bill 4023) and Public Act 323 of 1994 (enrolled House Bill 5593) to create two new business organizations -- limited liability companies (LLCs) and limited liability partnerships (LLPs), respectively -- that allow businesses certain kinds of management and organizational flexibility, while also qualifying them for favorable tax treatment and limiting the personal liability of those involved in the company or partnership. However, when this legislation went through last session, it failed to include provisions that would allow member/managers of small LLCs, which are analogous to small corporations, the same exclusions from the worker's compensation act that the act currently allows for the officer/stockholders of small corporations. Legislation has been introduced to address this issue.

***THE CONTENT OF THE BILL:***

The bill would amend the Worker's Disability Compensation Act (Public Act 317 of 1969) to allow certain employee/owners of small limited liability companies (LLCs) to exempt themselves from the act's disability insurance requirements and to specify that the managers and members of LLCs and the partners in a limited liability partnership would be liable for any part of a judgement against the LLC or LLP left unpaid by the LLC or LLP.

Exclusion. The bill would allow employees of limited liability companies (LLCs) with not more than ten members to elect to be individually excluded from the act under the following circumstances:

- (1) the employee was a manager and member of the LLC and owned at least a ten percent interest in the LLC;
- (2) a majority of the members -- or, if the LLC had more than one manager, all of the managers -- of the LLC approved;
- (3) the employee gave written notice to the insurance carrier of his or her decision to elect to be excluded from the act; and
- (4) the consent of the LLC was endorsed on the notice to the carrier.

The manager/member's exclusion from the act would remain in effect until he or she revoked it in writing. While the exclusion was in effect, he or she could sue the LLC under tort law (that is, certain legal defenses -- such as employee negligence, which employers may not use under the act against employees suing to recover damages for personal injury or death -- would be allowed to employers).

Joint and several liability. Under the worker's compensation act, officers and directors of corporations who fail to see to it that their corporations are able to meet their obligations toward people awarded compensation under the act, are individually and jointly and severally liable for unpaid awards. The bill would specify similar conditions for the managers and members of limited liability companies, and the partners of limited liability partnerships, by making them individually

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and jointly and severally liable for any unpaid portion of a judgment executed against the company or partnership.

MCL 418.151 et al.

***FISCAL IMPLICATIONS:***

Fiscal information is not available.

***ARGUMENTS:***

***For:***

In recent years, limited liability companies, which are a new form of business entity that combines the best features of the partnership and the corporation, have become very popular. A limited liability company form provides its "members" (those holding an interest in the company) protection against personal liability for the debts of the business; it offers flexibility in structuring a company's internal organization, management, and procedures; and, if its operating agreement is properly drafted, secures for the company the same favorable federal tax treatment as a partnership. Michigan law, enacted last session, now allows the creation of LLCs, and reportedly the number of businesses choosing this form of business organization has been increasing since the act was implemented in 1993. However, apparently when some of these LLCs have tried to exclude their member/managers from the provisions of the worker's compensation act -- as certain small corporations can exclude their officer/stockholders - they have been informed by the state Bureau of Workers' Disability Compensation that since these exclusions are not explicitly allowed by law, member/managers of LLCs must be insured under the act's provisions. Since small LLCs (those with ten or fewer members) are comparable to certain small corporations for which the worker's compensation act allows exclusions, the bill simply would clarify that certain small LLCs could make use of a similar exclusion.

***POSITIONS:***

The Michigan Association of Insurance Agents supports the bill. (5-19-95)