



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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House Bill 4848 (Substitute H-1 as reported without amendment)  
Sponsor: Representative Walter J. DeLange  
House Committee: Human Resources and Labor  
Senate Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 10-20-95

### **RATIONALE**

The Worker's Disability Compensation Act generally requires employers to buy workers' disability compensation insurance for their employees. The Act, however, allows 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) an employee of a corporation with not more than 10 stockholders who also is an officer and stockholder of at least 10% of the corporation's stock. Public Act 23 of 1993 and Public Act 323 of 1994 created two new types of 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. When that legislation was enacted, however, 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 Disability Compensation Act that is allowed for the officer-stockholders of small corporations. Some people believe that the same exclusion from the Act's requirements that are granted to small corporations should be afforded to LLCs.

### **CONTENT**

**The bill would amend the Worker's Disability Compensation Act to allow certain employee-owners of small limited liability companies to exclude themselves from the Act's disability insurance requirements, and to specify that the**

**manager-members of LLCs and the partners in a limited liability partnership would be liable for any part of a judgment against the LLC or LLP left unpaid by the company or partnership.**

#### **Exclusion**

The bill would allow an employee of an LLC with not more than 10 members to elect to be individually excluded from the Act under the following circumstances:

- The employee was a manager and member of the LLC and owned at least a 10% interest in the LLC.
- A majority of the members approved, or, if the LLC had more than one manager, all of the manager-members of the LLC approved.
- The employee gave to the insurance carrier a written notice of his or her decision to elect to be excluded from the Act.
- The consent of the LLC was endorsed on the notice to the carrier.

The exclusion from the Act would remain in effect until the employee revoked it in writing. While the exclusion was in effect, the Act's prohibition against the use of certain defenses would not apply to an action brought by the employee against the LLC to recover damages for personal injury or wrongful death. (The Act specifies that, in these suits, it cannot be a defense that the employee was negligent, that the injury was caused by a fellow employee's negligence, or that the employee had assumed the risks of the employment conditions.)

### Liability of Manager-Members and Partners

Under the Worker's Disability Compensation Act, the officers and directors of a corporation that has not complied with the Act's insurance requirements, are individually and jointly and severally liable for any portion of a judgment that is unsatisfied after execution against the corporation. The bill would impose similar conditions for the manager-members of LLCs and the partners of LLPs, by specifying that they would be individually and jointly and severally liable for any unpaid portion of a judgment executed against the company or partnership.

MCL 418.151 et al.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

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 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 organization has been increasing.

When some LLCs have tried to exclude their member-managers from the provisions of the Worker's Disability Compensation Act, as certain small corporations can exclude their officer-stockholders, they apparently have been informed that, since those exclusions are not explicitly allowed by law, member-managers of LLCs must be insured under the Act's provisions. The bill simply would grant the same exclusion privilege to small LLCs (those with 10 or fewer members) that currently is granted to small corporations.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bill would not have a fiscal impact on the Department of Commerce, the State of Michigan, or local governmental units.

Fiscal Analyst: K. Lindquist

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.