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# 2013 Changes to the Missouri Workers' Compensation Act

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## Overview

On July 10, 2013, Missouri Governor Jay Nixon signed into law Senate Bill 1 (SB1). SB1 addresses, in part, the negative impact of prior amendments to the Missouri Workers' Compensation Act that occurred in 2005. SB1 restores occupational diseases as well as the exclusive remedy protections for these claims under the Missouri Workers' Compensation Act. SB1 creates a new class of occupational diseases (occupational diseases by toxic exposure) that entitle an injured worker to enhanced benefits. Finally, SB1 addresses changes to the Second Injury Fund (SIF). **SB1 is effective as of January 1, 2014.**

## Major Provisions of SB1

### *Occupational Diseases*

- **Adds “occupational diseases”** to the Statute and provides that “Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident or occupational disease arising out of and in the course of the employee’s employment.” (287.120.1)
- **Exclusive remedy protection extended** to employers for claims of injury by occupational disease as well as injury by accident. (287.120.2)

### *Analysis of Impact*

- Limits the employer’s exposure for personal injury or death of an employee as the result of an occupational disease that arises out of and in the course of the employee’s employment to workers compensation exclusively.

### *Occupational Diseases due to toxic exposure*

- **Creates a new category of occupational diseases** known as “occupational diseases due to toxic exposure” to include: mesothelioma, asbestosis, berylliosis, coal worker’s pneumoconiosis, bronchiolitis obliterans, silicosis, silicotuberculosis, manganism, acute myelogenous leukemia and myelodysplastic syndrome (287.020.11)
- **Eliminates employers right of subrogation** in any associated third-party civil claim or action where the injury is caused by an “occupational disease by toxic exposure” (287.150.7)
- **Grants enhanced benefits** for all claims for “occupational diseases by toxic exposure” that result in permanent total disability or death. For those cases (excluding mesothelioma), the additional benefit equals 200% of Missouri’s State Average Weekly Wage for 100 weeks. (287.200.4(2))
- **Grants enhanced benefits for mesothelioma** for all claims that results in permanent total disability or death. For those cases, the additional benefit equals 300% of Missouri’s State Average Weekly Wage for 212 weeks. (287.200.4(3)(a))

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- **Enhanced benefits survive the employee's death** and are payable to the employees spouse, children, natural or adopted, legitimate or illegitimate, or estate if the employee dies before receipt of those enhanced benefits (287.200.4(5))
- **Employers can reject mesothelioma benefits coverage**, BUT if the employer rejects mesothelioma coverage, then the exclusive remedy protection provided in 287.120.2 does not apply (287.200.4(3)(b))

### ***Analysis of Impact***

- Increases payouts for "occupational disease due to toxic exposure." For those claims, excluding mesothelioma, the enhanced payout (based on the current state average weekly wage of \$812.46) would be \$162,492.00 and for mesothelioma the enhanced payout would be \$516,724.56.
- Eliminates the ability to mitigate payout for "occupational diseases by toxic exposure" caused by any third party. The employer will not be entitled to assert a lien against any third party recovery the injured worker or the estate may receive.
- Exposes the employer to civil liability actions filed by its employees who allege work-related mesothelioma if the employer chooses to reject mesothelioma coverage.

### ***Second Injury Fund***

- To address solvency issues of the SIF, the Director of the Division shall collect a supplemental surcharge not to exceed 3 percent for calendar years 2014 to 2021 of the policyholders or self-insured workers compensation net deposit, net premium or net assessment for the previous policy year. 287.715.6

### ***Some Payments Made by the SIF***

- Cases of Permanent disability involving previous disability due to injuries occurring prior to January 1, 2014, shall be compensated under 287.220.2
- All claims for injuries after January 1, 2014, and all claims involving a subsequent compensable injury for occupational diseases after January 1, 2014, shall be compensated per 287.220.3. Criteria required includes:
  - Medical documentation of preexisting disability equaling fifty weeks of permanent partial disability compensation according to the medical standards that are used in determining such compensation, which is:
    - A direct result of active military duty; or
    - A direct result of a compensable injury; or
    - Not a compensable injury, but such preexisting disability significantly aggravates or accelerates the subsequent injury; or
    - A preexisting permanent partial disability of an extremity, loss of eyesight in one eye, or loss of hearing in one ear and there is subsequent work-related injury to the opposite extremity, loss of eyesight or hearing in the other eye or ear; and
    - Such employee thereafter sustains a compensable work-related disability that when combined with the preexisting disability as noted above results in permanent total disability; or
    - The employee employed by a sheltered workshop thereafter sustains a compensable work-related injury that when combined with the preexisting disability results in a permanent total disability.

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- When an employee is entitled to compensation as provided in this subsection, the employer at the time of the last work-related injury shall be liable only for the disability resulting from the subsequent injury considered alone and of itself.

### **Some Payments No Longer Made by the SIF**

- Medical and disability expenses related to claims for injuries and death occurring after January 1, 2014, will no longer be paid from the SIF in uninsured employer cases. 287.220.7
- Second job wage loss benefits will no longer be paid from the SIF for injuries after January 1, 2014. 287.220.11
- No compensation is payable from the SIF if the employee files a claim for compensation under the workers compensation law of another state with jurisdiction over the employee's injury or accident or occupational disease 287.220.12
- Life payments made from the SIF shall be suspended when the employee is able to obtain suitable gainful employment or be self-employed 287.220.13
- No claims for permanent partial disability occurring after the effective date of this section shall be filed against the SIF (287.220.3(1))

### ***Analysis of Impact***

- Employers will be responsible for an increased surcharge to fund the SIF and address SIF insolvency issues.
- Allows for compensation from the SIF for occupational disease claims filed after January 1, 2014.
- The restrictions regarding the types of claims payable from the SIF may cause increased payouts under the workers compensation policy by shifting the responsibility back to the employer.

To review Senate Bill 1 in its entirety, please visit <http://www.senate.mo.gov/13info/pdf-bill/tat/SB1.pdf>