

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1002

Chapter 260, Laws of 2003

(partial veto)

58th Legislature
2003 Regular Session

MERCURY REDUCTION

EFFECTIVE DATE: 7/27/03

Passed by the House April 22, 2003
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2003
Yeas 47 Nays 1

BRAD OWEN

President of the Senate

Approved May 14, 2003, with the
exception of section 1, which is vetoed.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1002** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 14, 2003 - 10:12 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1002

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hunt, Berkey, Cooper, Romero, Linville, Chase, Kagi, Wood, Simpson, Morrell, Rockefeller, Ruderman, Fromhold, Dickerson, Conway, Kessler, Cody, Jarrett, Voloria, O'Brien, Campbell, McDermott, Clibborn, Sullivan, Nixon, McIntire, Lantz, Moeller and Hudgins)

READ FIRST TIME 02/13/03.

1 AN ACT Relating to mercury reduction and education; adding a new
2 chapter to Title 70 RCW; creating a new section; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 ***NEW SECTION.** *Sec. 1. The legislature finds that the protection of*
6 *the environment is of utmost importance to ensuring the health and*
7 *safety of the citizens of the state of Washington. The legislature*
8 *further finds that fish caught commercially and recreationally provide*
9 *an important element in a healthy diet, and that the fish caught in*
10 *Washington waters need to be protected from any sources that might*
11 *impact the healthfulness of consuming such fish. The legislature*
12 *further finds that species caught in our region are safe for citizens*
13 *to eat.*

14 *Therefore, the legislature intends to take all measures necessary*
15 *to ensure that fish caught within our state's waters continue to be*
16 *safe from any degrading influences.*

*Sec. 1 was vetoed. See message at end of chapter.

17 **NEW SECTION.** *Sec. 2. The definitions in this section apply*
18 *throughout this chapter unless the context clearly requires otherwise.*

1 (1) "Automotive mercury switch" includes a convenience switch, such
2 as a switch for a trunk or hood light, and a mercury switch in antilock
3 brake systems.

4 (2) "Department" means the department of ecology.

5 (3) "Director" means the director of the department of ecology.

6 (4) "Health care facility" includes a hospital, nursing home,
7 extended care facility, long-term care facility, clinical or medical
8 laboratory, state or private health or mental institution, clinic,
9 physician's office, or health maintenance organization.

10 (5) "Manufacturer" includes any person, firm, association,
11 partnership, corporation, governmental entity, organization, or joint
12 venture that produces a mercury-added product or an importer or
13 domestic distributor of a mercury-added product produced in a foreign
14 country. In the case of a multicomponent product containing mercury,
15 the manufacturer is the last manufacturer to produce or assemble the
16 product. If the multicomponent product or mercury-added product is
17 produced in a foreign country, the manufacturer is the first importer
18 or domestic distributor.

19 (6) "Mercury-added button-cell battery" means a button-cell battery
20 to which the manufacturer intentionally introduces mercury for the
21 operation of the battery.

22 (7) "Mercury-added novelty" means a mercury-added product intended
23 mainly for personal or household enjoyment or adornment. Mercury-added
24 novelties include, but are not limited to, items intended for use as
25 practical jokes, figurines, adornments, toys, games, cards, ornaments,
26 yard statues and figures, candles, jewelry, holiday decorations, items
27 of apparel, and other similar products. Mercury-added novelty does not
28 include games, toys, or products that require a button-cell or lithium
29 battery, liquid crystal display screens, or a lamp that contains
30 mercury.

31 (8) "Mercury-added product" means a product, commodity, or
32 chemical, or a product with a component that contains mercury or a
33 mercury compound intentionally added to the product, commodity, or
34 chemical in order to provide a specific characteristic, appearance, or
35 quality, or to perform a specific function, or for any other reason.
36 Mercury-added products include, but are not limited to, mercury
37 thermometers, mercury thermostats, and mercury switches in motor
38 vehicles.

1 (9) "Mercury manometer" means a mercury-added product that is used
2 for measuring blood pressure.

3 (10) "Mercury thermometer" means a mercury-added product that is
4 used for measuring temperature.

5 (11) "Retailer" means a retailer of a mercury-added product.

6 NEW SECTION. **Sec. 3.** (1) Effective January 1, 2004, a
7 manufacturer, wholesaler, or retailer may not knowingly sell at retail
8 a fluorescent lamp if the fluorescent lamp contains mercury and was
9 manufactured after November 30, 2003, unless the fluorescent lamp is
10 labeled in accordance with the guidelines listed under subsection (2)
11 of this section. Primary responsibility for affixing labels required
12 under this section is on the manufacturer, and not on the wholesaler or
13 retailer.

14 (2) Except as provided in subsection (3) of this section, a lamp is
15 considered labeled pursuant to subsection (1) of this section if the
16 lamp has all of the following:

17 (a) A label affixed to the lamp that displays the internationally
18 recognized symbol for the element mercury; and

19 (b) A label on the lamp's packaging that: (i) Clearly informs the
20 purchaser that mercury is present in the item; (ii) explains that the
21 fluorescent lamp should be disposed of according to applicable federal,
22 state, and local laws; and (iii) provides a toll-free telephone number,
23 and a uniform resource locator internet address to a web site, that
24 contains information on applicable disposal laws.

25 (3) The manufacturer of a mercury-added lamp is in compliance with
26 the requirements of this section if the manufacturer is in compliance
27 with the labeling requirements of another state.

28 (4) The provisions of this section do not apply to products
29 containing mercury-added lamps.

30 NEW SECTION. **Sec. 4.** The department of health must develop an
31 educational plan for schools, local governments, businesses, and the
32 public on the proper disposal methods for mercury and mercury-added
33 products.

34 NEW SECTION. **Sec. 5.** A school may not purchase for use in a
35 primary or secondary classroom bulk elemental mercury or chemical

1 mercury compounds. By January 1, 2006, all primary and secondary
2 schools in the state must remove and properly dispose of all bulk
3 elemental mercury, chemical mercury, and bulk mercury compounds used as
4 teaching aids in science classrooms, not including barometers.

5 NEW SECTION. **Sec. 6.** (1) Effective January 1, 2006, no person may
6 sell, offer for sale, or distribute for sale or use in this state a
7 mercury-added novelty. A manufacturer of mercury-added novelties must
8 notify all retailers that sell the product about the provisions of this
9 section and how to properly dispose of any remaining mercury-added
10 novelty inventory.

11 (2)(a) Effective January 1, 2006, no person may sell, offer for
12 sale, or distribute for sale or use in this state a manometer used to
13 measure blood pressure or a thermometer that contains mercury. This
14 subsection (2)(a) does not apply to:

15 (i) An electronic thermometer with a button cell battery containing
16 mercury;

17 (ii) A thermometer that contains mercury and that is used for food
18 research and development or food processing, including meat, dairy
19 products, and pet food processing;

20 (iii) A thermometer that contains mercury and that is a component
21 of an animal agriculture climate control system or industrial
22 measurement system or for veterinary medicine until such a time as the
23 system is replaced or a nonmercury component for the system or
24 application is available;

25 (iv) A thermometer or manometer that contains mercury that is used
26 for calibration of other thermometers, manometers, apparatus, or
27 equipment, unless a nonmercury calibration standard is approved for the
28 application by the national institute of standards and technology;

29 (v) A thermometer that is provided by prescription. A manufacturer
30 of a mercury thermometer shall supply clear instructions on the careful
31 handling of the thermometer to avoid breakage and proper cleanup should
32 a breakage occur; or

33 (vi) A manometer or thermometer sold or distributed to a hospital,
34 or a health care facility controlled by a hospital, if the hospital has
35 adopted a plan for mercury reduction consistent with the goals of the
36 mercury chemical action plan developed by the department under section
37 302, chapter 371, Laws of 2002.

1 (b) A manufacturer of thermometers that contain mercury must notify
2 all retailers that sell the product about the provisions of this
3 section and how to properly dispose of any remaining thermometer
4 inventory.

5 (3) Effective January 1, 2006, no person may sell, install, or
6 reinstall a commercial or residential thermostat that contains mercury
7 unless the manufacturer of the thermostat conducts or participates in
8 a thermostat recovery or recycling program designed to assist
9 contractors in the proper disposal of thermostats that contain mercury
10 in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource
11 conservation and recovery act.

12 (4) No person may sell, offer for sale, or distribute for sale or
13 use in this state a motor vehicle manufactured after January 1, 2006,
14 if the motor vehicle contains an automotive mercury switch.

15 (5) Nothing in this section restricts the ability of a
16 manufacturer, importer, or domestic distributor from transporting
17 products through the state, or storing products in the state for later
18 distribution outside the state.

19 NEW SECTION. **Sec. 7.** (1) The department of general administration
20 must, by January 1, 2005, revise its rules, policies, and guidelines to
21 implement the purpose of this chapter.

22 (2) The department of general administration must give priority and
23 preference to the purchase of equipment, supplies, and other products
24 that contain no mercury-added compounds or components, unless: (a)
25 There is no economically feasible nonmercury-added alternative that
26 performs a similar function; or (b) the product containing mercury is
27 designed to reduce electricity consumption by at least forty percent
28 and there is no nonmercury or lower mercury alternative available that
29 saves the same or a greater amount of electricity as the exempted
30 product. In circumstances where a nonmercury-added product is not
31 available, preference must be given to the purchase of products that
32 contain the least amount of mercury added to the product necessary for
33 the required performance.

34 NEW SECTION. **Sec. 8.** The department is authorized to participate
35 in a regional or multistate clearinghouse to assist in carrying out any
36 of the requirements of this chapter. A clearinghouse may also be used

1 for examining notification and label requirements, developing education
2 and outreach activities, and maintaining a list of all mercury-added
3 products.

4 NEW SECTION. **Sec. 9.** A violation of this chapter is punishable by
5 a civil penalty not to exceed one thousand dollars for each violation
6 in the case of a first violation. Repeat violators are liable for a
7 civil penalty not to exceed five thousand dollars for each repeat
8 violation. Penalties collected under this section must be deposited in
9 the state toxics control account created in RCW 70.105D.070.

10 NEW SECTION. **Sec. 10.** Nothing in this chapter applies to
11 crematories as that term is defined in RCW 68.04.070.

12 NEW SECTION. **Sec. 11.** Any fiscal impact on the department or the
13 department of health that results from the implementation of this
14 chapter must be paid for out of funds that are appropriated by the
15 legislature from the state toxics control account for the
16 implementation of the department's persistent bioaccumulative toxic
17 chemical strategy.

18 NEW SECTION. **Sec. 12.** Nothing in this chapter applies to
19 prescription drugs regulated by the food and drug administration under
20 the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.),
21 to biological products regulated by the food and drug administration
22 under the public health service act (42 U.S.C. Sec. 262 et seq.), or to
23 any substance that may be lawfully sold over-the-counter without a
24 prescription under the federal food, drug, and cosmetic act (21 U.S.C.
25 Sec. 301 et seq.).

26 NEW SECTION. **Sec. 13.** Nothing in section 3, 6 (1), (3), or (4),
27 or 7 of this act applies to medical equipment or reagents used in
28 medical or research tests regulated by the food and drug administration
29 under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et
30 seq.).

31 NEW SECTION. **Sec. 14.** The department of ecology shall petition

1 the United States environmental protection agency requesting
2 development of a national mercury repository site.

3 NEW SECTION. **Sec. 15.** Sections 1 through 13 of this act
4 constitute a new chapter in Title 70 RCW.

Passed by the House April 22, 2003.

Passed by the Senate April 17, 2003.

Approved by the Governor May 14, 2003, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 14, 2003.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1,
Engrossed Substitute House Bill No. 1002 entitled:

"AN ACT Relating to mercury reduction and education;"

This bill provides protection for our environment and for the people
of our state from potential contamination by mercury, a chemical so
toxic that 1/20th of a teaspoon can contaminate a 20-acre lake to the
point where fish cannot be consumed. There is an estimated 1,000
pounds of mercury disposed of in our state every year. This bill
will enable us to reduce the public health threat posed by this
chemical.

Unfortunately, the intent section of this bill states, without
qualification, that fish caught in our region are safe to eat. In
fact, our Department of Health has issued thirteen fish consumption
advisories for a variety of species of fish in waters around the
state. These advisories demonstrate that contamination of our waters
is still a serious issue. We need to address these sources of
contamination and prevent them, rather than assert they do not
exist. This bill is a dramatic example of how we can step-up to our
obligations and prevent mercury from entering our environment,
threatening human health and the health of our wildlife.

For this reason, I have vetoed section 1 of Engrossed Substitute
House Bill No. 1002.

With the exception of section 1, Engrossed Substitute House Bill No.
1002 is approved."