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## The Temperature Heats Up on Mercury

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Proposed legislation working its way through the Massachusetts Legislature presents the prospect of imposing far-reaching labeling, product return, product ban and exemption obligations with respect to a wide variety of products containing mercury. If this legislation survives, it will have broad-reaching effects and will dramatically expand the size of the regulated community.

The proposed law (House Bill 5173) already has moved through a number of committees in the legislature. Industry groups have raised questions about the accuracy and continued validity of data cited by the bill's supporters. Industry groups contend that a broad array of changes affecting industry in the Commonwealth has led to a dramatic decline in the volume of mercury emitted into the atmosphere by sources within Massachusetts. They estimate reductions at the rate of 90% over a five-year period. Supporters of the bill, on the other hand, claim that the mercury reduction steps taken by Massachusetts lag far behind those taken by other New England states, and have suggested that the legislation may be necessary to satisfy the substance of announcements made at a related meeting of the New England Governors and the Premiers of the Eastern Canadian provinces. As of press time, the bill had been reported favorably by the House Science and Technology Committee and referred to the House Ways and Means Committee.

## **The Substance**

The legislation as proposed would require that manufacturers of mercury (a broadly defined class) ensure that mercury-containing products are properly collected, transported and recycled within Massachusetts. The legislation would impose financial responsibility on manufacturers to establish collection and recycling systems. The bill also would require manufacturers to ensure that products containing mercury are labeled in a manner that informs purchasers that the item contains mercury, and explains how the presence of mercury will affect the purchaser's ability to dispose of or recycle the product. A similar labeling requirement also would be imposed on out of state vendors that supply products containing mercury to customers that reside within the Commonwealth.

The bill purports to make available an alternative to the labeling requirement. However, the standards that an applicant must meet are extremely detailed and require the applicant to obtain approval of the alternative from the Department of Environmental Protection (DEP). Moreover, the legislation indicates that an alternative method is available only where "strict compliance with the requirements" of the labeling section is not feasible.

The legislation would prohibit the sale or even the promotion within the Commonwealth of products covered by the law if those products did not bear the appropriate label.

Finally, the legislation would prohibit solid waste collectors from "knowingly" collecting materials that contained mercury except in connection with household hazardous waste collection. The bill also would impose notification requirements on the operators of solid waste facilities advising facility users of prohibitions on mercury disposal.

## **Product Ban**

The legislation bans the sale of mercury thermometers without a prescription, and prohibits any school from purchasing certain mercury

compounds and products except in limited instances in which “no adequate substitute exists.” In a particularly far-reaching provision, the legislation prohibits the sale of mercury unless the vendor provides a material safety data sheet and the purchaser executes a statement addressing how the purchaser will use the product. The statement will confirm the purchaser’s understanding of the toxicity of mercury, and commit the purchaser to a specified minimal level of responsibility with respect to the mercury.

The substance of any regulations the DEP promulgates in response to the legislation remains to be seen. The manner in which out of state manufacturers, and vendors both within and outside Massachusetts, would comply with the legislation obviously presents complex questions.

### **The Future?**

There is little disagreement among the bill’s proponents and opponents regarding the toxicity of mercury. Their disagreement focuses on the progress Massachusetts has made within the past several years on mercury reduction efforts and the financial and other effects that complying with the legislation will have on businesses in Massachusetts. The regulated community – now potentially including more persons and entities than typically would be included in that category – should take note of the scope of this legislation.

[Rob Kirsch](#)

[rob.kirsch@haledorr.com](mailto:rob.kirsch@haledorr.com)

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### ***Authors***



## Robert C. Kirsch

SENIOR COUNSEL

✉ [rob.kirsch@wilmerhale.com](mailto:rob.kirsch@wilmerhale.com)

☎ +1 617 526 6779