
SENATE BILL 5369

State of Washington

68th Legislature

2023 Regular Session

By Senators Billig, Padden, Short, Shewmake, Schoesler, Lovelett, Conway, Boehnke, Salomon, Nguyen, Van De Wege, Wagoner, Dhingra, Dozier, Hasegawa, Hunt, Keiser, Randall, Torres, and Valdez

Read first time 01/13/23. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to reassessing standards for polychlorinated
2 biphenyls in consumer products; adding new sections to chapter
3 70A.350 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that
6 polychlorinated biphenyls, or PCBs, are a hazardous chemical class
7 that have been identified as carcinogenic, a developmental toxicant,
8 toxic to aquatic organisms, and persistent and bioaccumulative.
9 According to the United States environmental protection agency, PCBs
10 are probable human carcinogens and may have serious and potential
11 effects on the immune system, reproductive system, nervous system,
12 and endocrine system.

13 (2) Humans and other organisms can be exposed to PCBs in a number
14 of ways. PCBs can be released into the environment from hazardous
15 waste sites, illegal dumping, or disposal of PCB wastes or PCB-
16 containing products in areas or landfills not designed to handle
17 hazardous waste, leaks, or releases from electrical transformers
18 containing PCBs, and wastewater discharges. Once PCBs are released,
19 the chemicals do not readily break down in the environment and can
20 cycle for long periods between air, water, and soil. PCBs can
21 accumulate in leaves and above-ground parts of plants and food crops,

1 and they are also taken up into the bodies of small organisms and
2 fish, resulting in potential exposure for people and organisms that
3 ingest the fish.

4 (3) In 1979, the United States banned the production of PCBs
5 under the toxic substances control act. However, the United States
6 environmental protection agency's regulations implementing the toxic
7 substances control act for PCBs allow some inadvertent generation of
8 PCBs to occur in excluded manufacturing processes. These
9 manufacturing by-product PCBs have been identified in wastewater,
10 sediments, and air in numerous locations and have been positively
11 identified in the testing of new products.

12 (4) The legislature finds that the state has done much to address
13 PCB contamination, including cleanup, permitting, stormwater
14 management, and fish advisories. In addition, the United States
15 environmental protection agency, Washington state, and the Spokane
16 tribe of Indians have established PCB water quality standards to
17 protect human health and the environment. These standards are
18 critical for addressing release and exposure from legacy and
19 nonlegacy PCBs. However, the standards cannot be achieved with
20 currently available water treatment technology if the waste stream
21 continues to include new sources of PCBs allowable under the toxic
22 substances control act at levels measured in products such as paints,
23 inks, and pigments. While the United States environmental protection
24 agency has restored a human health criteria standard of seven parts
25 per quadrillion in Washington waters, the toxic substances control
26 act limit for PCBs in products is an annual average of 25 parts per
27 million, with a maximum 50 parts per million adjusted total PCBs.
28 Therefore, the legislature finds that nonlegacy PCB contamination may
29 most effectively be managed upstream at the product and process
30 source as opposed to downstream facilities at the end of the product
31 life cycle. The toxic substances control act standard for inadvertent
32 PCBs does not reflect current science on limits needed to protect
33 human health and the environment and is overdue for revision.

34 (5) While previous industry analysis of toxic substances control
35 act rule making has asserted negative impacts and infeasibility in
36 disallowing by-product PCBs, the legislature finds that safer,
37 feasible, and available alternatives to PCB-containing paints and
38 printing inks now exist, as determined by the department of ecology
39 in its June 2022 *Safer Products for Washington* report. Moreover,
40 since safer and available products and processes to produce paints

1 and printing inks do exist, the legislature finds that use of
2 manufacturing processes resulting in products with PCB by-products is
3 not inadvertent, but intentional, and constitutes a use of the
4 chemical within the product.

5 (6) Therefore, the legislature intends to direct the department
6 of ecology to petition the United States environmental protection
7 agency to reassess its PCB regulations under the toxic substances
8 control act and to establish restrictions on the use of PCBs
9 previously considered inadvertent in consumer products under its
10 authority provided by the pollution prevention for healthy people and
11 Puget Sound act.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 70A.350
13 RCW to read as follows:

14 (1) The department must petition the United States environmental
15 protection agency to reassess its regulations on excluded
16 manufacturing processes from prohibitions on manufacturing,
17 processing, distribution in commerce, and use of PCBs and PCB items
18 under 40 C.F.R. Sec. 761.3 for the purpose of eliminating or reducing
19 the presence of PCBs in consumer products.

20 (2) In petitioning the United States environmental protection
21 agency, the department must include legislative findings under this
22 chapter and information on:

23 (a) Health effects of PCBs;

24 (b) Release and exposure of PCBs including, but not limited to,
25 concentrations of PCBs measured in consumer products and in state
26 waters, soils, and fish tissue;

27 (c) Safer alternatives for consumer products that contain PCBs,
28 including the availability and feasibility of alternatives; and

29 (d) Other relevant data or findings as determined by the
30 department.

31 (3) The department is not required to generate new data and may
32 use previously compiled data and findings developed in the
33 performance of duties under this chapter.

34 (4) The department may consult with the department of health and
35 other relevant state agencies in developing the petition under this
36 section.

37 (5) To the extent practicable, the department must seek
38 completion of the petition review by January 1, 2025.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 70A.350
2 RCW to read as follows:

3 (1) Paints and printing inks are confirmed as priority consumer
4 products for PCB chemicals.

5 (2) For the products identified in subsection (1) of this
6 section, the department is directed to:

7 (a) Establish a restriction or prohibition under this chapter by
8 June 1, 2025; and

9 (b) Adopt rules to implement the restriction or prohibition under
10 (a) of this subsection by December 1, 2026.

11 (3) The department may not administer or enforce any restriction
12 or prohibition established under subsection (2) of this section if:

13 (a) A court of competent jurisdiction determines that federal
14 regulations preempt the restriction or prohibition; or

15 (b) The restriction or prohibition does not align with any new
16 regulation established by the United States environmental protection
17 agency.

18 (4) If any restriction or prohibition established under
19 subsection (2) of this section is determined by a court of competent
20 jurisdiction to be preempted by federal regulations, the department
21 is directed to:

22 (a) Establish a reporting requirement for priority chemicals or
23 processes that generate priority chemicals under this chapter within
24 180 days from the determination of preemption; and

25 (b) Adopt rules to implement the reporting requirement under (a)
26 of this subsection within 18 months from the date the reporting
27 requirement is established.

28 (5) As used in this section, "paints and printing inks" may
29 include, but are not limited to, building paint for indoor and
30 outdoor use, spray paint, children's paint, road paint, and printing
31 inks used in paper and packaging.

32 NEW SECTION. **Sec. 4.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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