

CERTIFICATION OF ENROLLMENT

SENATE BILL 5369

Chapter 399, Laws of 2023

68th Legislature
2023 Regular Session

CONSUMER PRODUCTS—POLYCHLORINATED BIPHENYLS—PETITION TO EPA

EFFECTIVE DATE: July 23, 2023

Passed by the Senate April 23, 2023
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 22, 2023
Yeas 98 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 9, 2023 2:39 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5369** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 10, 2023

**Secretary of State
State of Washington**

SENATE BILL 5369

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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 a new section 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 that are billions of times higher than applicable
24 water quality standards. While the United States environmental
25 protection agency has restored a human health criteria standard of
26 seven parts per quadrillion in Washington waters, the toxic
27 substances control act limit for PCBs in products is an annual
28 average of 25 parts per million, with a maximum 50 parts per million
29 adjusted total PCBs. Therefore, the legislature finds that nonlegacy
30 PCB contamination may most effectively be managed upstream at the
31 product and process source as opposed to downstream facilities at the
32 end of the product life cycle. The toxic substances control act
33 standard for inadvertent PCBs does not reflect current science on
34 limits needed to protect human health and the environment and is
35 overdue for revision.

36 (5) While previous industry analysis of toxic substances control
37 act rule making has asserted negative impacts and infeasibility in
38 disallowing by-product PCBs, the legislature finds that safer,
39 feasible, and available alternatives to PCB-containing paints and
40 printing inks now exist, as determined by the department in its June

1 2022 *Safer Products for Washington* report. Moreover, since safer and
2 available products and processes to produce paints and printing inks
3 do exist, the legislature finds that use of manufacturing processes
4 resulting in products with PCB by-products is not inadvertent, but
5 intentional, and constitutes a use of the chemical within the
6 product.

7 (6) Therefore, the legislature intends to direct the department
8 of ecology to petition the United States environmental protection
9 agency to reassess its PCB regulations under the toxic substances
10 control act.

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

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

19 (2) In petitioning the United States environmental protection
20 agency, the department must include legislative findings in section 1
21 of this act and information on:

22 (a) Health effects of PCBs;

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

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

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

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

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

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

Passed by the Senate April 23, 2023.

Passed by the House April 22, 2023.

Approved by the Governor May 9, 2023.
Filed in Office of Secretary of State May 10, 2023.

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