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**SENATE BILL 5369**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Billig, Padden, Short, Shewmake, Schoesler, Lovelett, Conway, Boehnke, Salomon, Nguyen, Van De Wege, and Wagoner

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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