

# STATE OF NEW YORK

8932

## IN SENATE

April 1, 2024

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the regulation of toxic substances in playground surfacing materials

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 37 of the environmental conservation law is  
2 amended by adding a new title 4 to read as follows:

3 TITLE IV

4 REGULATION OF TOXIC SUBSTANCES IN PLAYGROUND SURFACING MATERIALS

5 Section 37-0401. Definitions.

6 37-0403. Prohibition on sale, distribution, or offer for sale of  
7 playground surfacing materials containing PFAS, PAHs,  
8 or certain quantities of lead.

9 37-0405. Required notification.

10 37-0407. Violations.

11 § 37-0401. Definitions.

12 As used in this title, the following terms shall have the following  
13 meanings:

14 1. "Playground surfacing materials" means products, materials, or  
15 substances used or installed on the ground surface of a playground.

16 2. "Playground" means an outdoor recreation area for children equipped  
17 with one or more play structures.

18 3. "Manufacturer" means the person that manufactures a product or  
19 whose brand name is affixed to the product. In the case of a product  
20 imported into the United States, "manufacturer" includes the importer or  
21 first domestic distributor of the product if the person that manufac-  
22 tured or assembled the product or whose brand name is affixed to the  
23 product does not have a presence in the United States.

24 4. "PFAS" means perfluoroalkyl and polyfluoroalkyl substances and  
25 includes any member of the class of fluorinated organic chemicals  
26 containing at least one fully flourished carbon atom.

27 5. "PAHs" means polycyclic aromatic hydrocarbons.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD14813-02-4

1 § 37-0403. Prohibition on sale, distribution, or offer for sale of play-  
2 ground surfacing materials containing PFAS, PAHs, or  
3 certain quantities of lead.

4 Commencing on January first, two thousand twenty-six, no person shall  
5 sell, distribute, or offer for sale in this state any playground surfac-  
6 ing material that contains PFAS, PAHs, or more than ninety parts per  
7 million of lead.

8 § 37-0405. Required notification.

9 1. A manufacturer of playground surfacing materials sold into the  
10 state shall provide persons that offer the product for sale or  
11 distribution in the state with a certificate of compliance. The certif-  
12 icate of compliance shall provide assurance, at a minimum, that the  
13 product does not contain any intentionally added PFAS, PAHs, or an  
14 amount of lead that is more than ninety parts per million. Any certif-  
15 icate of compliance provided under this section shall be signed by an  
16 authorized official of the manufacturer.

17 2. If PFAS, PAHs, or an amount of lead that is more than ninety parts  
18 per million are discovered in playground surfacing materials after the  
19 issuance of a certificate of compliance, the manufacturer shall recall  
20 the playground surfacing materials and reimburse the distributor or  
21 retailer for the playground surfacing materials.

22 § 37-0407. Violations.

23 1. A violation of any of the provisions of this title or any rule or  
24 regulation promulgated pursuant thereto shall be punishable in the case  
25 of a first violation, by a civil penalty not to exceed ten thousand  
26 dollars. In the case of a second and any further violation, the liabil-  
27 ity shall be for a civil penalty not to exceed twenty-five thousand  
28 dollars for each violation.

29 2. If the department has reason to believe that a playground surfacing  
30 material contains PFAS, PAHs, or an amount of lead that is more than  
31 ninety parts per million and is being distributed, sold, or offered  
32 for sale in violation of this section, the department shall direct the  
33 manufacturer of the playground surfacing materials to, within thirty  
34 days:

35 (a) provide the department with independent, third-party laboratory  
36 test results demonstrating that the playground surfacing materials do  
37 not contain PFAS, PAHs, or an amount of lead that is more than ninety  
38 parts per million; or

39 (b) notify persons who sell the playground surfacing materials in  
40 this state that the sale of the playground surfacing materials is  
41 prohibited in this state and provide the department with a list of the  
42 names and addresses of those notified.

43 3. A distributor or retailer of a product, who is not also the  
44 manufacturer of the product, shall not be held in violation of this  
45 title if it can show that such distributor or retailer relied in good  
46 faith on the certificate of compliance provided for in subdivision one  
47 of section 37-0405 of this title or the retailer received a notification  
48 pursuant to subdivision two of this section.

49 4. The department shall make information about any citation issued  
50 pursuant to this section available to the public on its internet  
51 website.

52 § 2. This act shall take effect immediately.