

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:

TITLE IV

REGULATION OF TOXIC SUBSTANCES IN PLAYGROUND SURFACING MATERIALS

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.

§ 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.