

STATE OF NEW YORK

8932--A

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. The environmental conservation law is amended by adding a
2 new section 37-0123 to read as follows:

3 § 37-0123. Regulation of toxic substances in playground surfacing mate-
4 rials.

5 1. As used in this title, the following terms shall have the following
6 meanings:

7 (a) "Playground surfacing materials" means products, materials, or
8 substances used or installed on the ground surface of a playground.

9 (b) "Playground" means an outdoor recreation area for children
10 equipped with one or more play structures.

11 (c) "Manufacturer" means the person that manufactures a product or
12 whose brand name is affixed to the product. In the case of a product
13 imported into the United States, "manufacturer" includes the importer or
14 first domestic distributor of the product if the person that manufac-
15 tured or assembled the product or whose brand name is affixed to the
16 product does not have a presence in the United States.

17 (d) "PFAS" means perfluoroalkyl and polyfluoroalkyl substances and
18 includes any member of the class of fluorinated organic chemicals
19 containing at least one fully flourished carbon atom.

20 (e) "PAHs" means polycyclic aromatic hydrocarbons.

21 2. Commencing on January first, two thousand twenty-six, no person
22 shall sell or offer for sale in this state any playground surfacing
23 material that contains PFAS, PAHs, or lead:

24 (a) that has been intentionally added; or

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

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1 (b) at or above a level that the department shall establish by regu-
2 lation that is the lowest level that can feasibly be achieved; provided,
3 however, that the department shall review such levels at least every
4 five years to determine whether they should be lowered; provided, howev-
5 er, that in no event shall such level for lead be more than ninety parts
6 per million.

7 3. (a) A manufacturer of playground surfacing materials sold into
8 the state shall provide persons that offer the product for sale in
9 the state with a certificate of compliance. The certificate of compli-
10 ance shall provide assurance, at a minimum, that the product is in
11 compliance with the requirements of subdivision two of this section. Any
12 certificate of compliance provided under this section shall be signed by
13 an authorized official of the manufacturer.

14 (b) In addition to any other applicable penalties, it shall be a
15 violation of this title to provide a certificate of compliance under
16 paragraph (a) of this subdivision when a product is knowingly in
17 violation of the requirements of this section.

18 4. If the department has reason to believe playground surfacing mate-
19 rials being sold or offered for sale that have not been installed in a
20 playground are not in compliance with the requirements of subdivision
21 two of this section, the department shall notify the manufacturer of the
22 playground surfacing materials, who shall, within thirty days:

23 (a) provide the department with independent, third-party laboratory
24 test results demonstrating that the playground surfacing materials are
25 in compliance with subdivision two of this section; or

26 (b) notify persons who sell the playground surfacing materials in this
27 state that the sale of the playground surfacing materials is prohibited
28 in this state and provide the department with a list of the names and
29 addresses of those notified.

30 5. A retailer of a product, who is not also the manufacturer of the
31 product, shall not be held in violation of subdivision two of this
32 section if it can show that such retailer relied in good faith on the
33 certificate of compliance provided for in subdivision three of this
34 section.

35 6. No part of this title shall be considered to apply to, require the
36 recall of, or require reimbursement for, playground surfacing materials
37 that have been sold or offered for sale prior to January first, two
38 thousand twenty-six.

39 § 2. Section 71-3703 of the environmental conservation law is amended
40 by adding a new subdivision 8 to read as follows:

41 8. Any person who violates any of the provisions of, or who fails to
42 perform any duty imposed by section 37-0123 of this chapter or any rule
43 or regulation promulgated pursuant thereto, shall be liable for a civil
44 penalty not to exceed one thousand dollars for each day, and in addition
45 thereto, such person may be enjoined from continuing such violation.
46 Such person shall for a second violation be liable to the people of the
47 state for a civil penalty not to exceed two thousand five hundred
48 dollars.

49 § 3. This act shall take effect on the one hundred eightieth day after
50 it shall have become a law.