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:

Section 1. The environmental conservation law is amended by adding a new section 37-0123 to read as follows:

§ 37-0123. Regulation of toxic substances in playground surfacing materials.

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

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

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

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

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

(e) "PAHs" means polycyclic aromatic hydrocarbons.

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

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

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

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

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

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

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

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

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

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

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

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