

SSB 6557 - H COMM AMD

By Committee on General Government Appropriations

ADOPTED AND ENGROSSED 03/04/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) Brake friction material is an essential component of motor
5 vehicle brakes and is critically important to transportation safety and
6 public safety in general;

7 (2) Debris from brake friction material containing copper and its
8 compounds is generated and released to the environment during normal
9 operation of motor vehicle brakes;

10 (3) Thousands of pounds of copper and other substances released
11 from brake friction material enter Washington state's streams, rivers,
12 and marine environment every year; and

13 (4) Copper is toxic to many aquatic organisms, including salmon.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Accredited laboratory" means a laboratory that is:

17 (a) Qualified and equipped for testing of products, materials,
18 equipment, and installations in accordance with national or
19 international standards; and

20 (b) Accredited by a third-party organization approved by the
21 department to accredit laboratories for purposes of this chapter.

22 (2) "Alternative brake friction material" means brake friction
23 material that:

24 (a) Does not contain:

25 (i) More than 0.5 percent copper or its compounds by weight;

26 (ii) The constituents identified in section 3 of this act at or
27 above the concentrations specified; and

28 (iii) Other materials determined by the department to be more

1 harmful to human health or the environment than existing brake friction
2 material;

3 (b) Enables motor vehicle brakes to meet applicable federal safety
4 standards, or if no federal safety standard exists, a widely accepted
5 industry standard;

6 (c) Is available at a cost and quantity that does not cause
7 significant financial hardship across the majority of brake friction
8 material and vehicle manufacturing industries; and

9 (d) Is available to enable brake friction material and vehicle
10 manufacturers to produce viable products meeting consumer expectations
11 regarding braking noise, shuddering, and durability.

12 (3) "Brake friction material" means that part of a motor vehicle
13 brake designed to retard or stop the movement of a motor vehicle
14 through friction against a rotor made of more durable material.

15 (4) "Committee" means the brake friction material advisory
16 committee.

17 (5) "Department" means the department of ecology.

18 (6)(a) "Motor vehicle" has the same meaning as defined in RCW
19 46.04.320 that are subject to licensing requirements under RCW
20 46.16.010.

21 (b) "Motor vehicle" does not include:

22 (i) Motorcycles as defined in RCW 46.04.330;

23 (ii) Motor vehicles employing internal closed oil immersed motor
24 vehicle brakes or similar brake systems that are fully contained and
25 emit no debris or fluid under normal operating conditions;

26 (iii) Military combat vehicles;

27 (iv) Race cars, dual-sport vehicles, or track day vehicles, whose
28 primary use is for off-road purposes and are permitted under RCW
29 46.16.160; or

30 (v) Collector vehicles, as defined in RCW 46.04.126.

31 (7)(a) "Motor vehicle brake" means an energy conversion mechanism
32 used to retard or stop the movement of a motor vehicle.

33 (b) "Motor vehicle brake" does not include brakes designed
34 primarily to hold motor vehicles stationary and not for use while motor
35 vehicles are in motion.

36 (8) "Original equipment service" means brake friction material
37 provided as service parts originally designed for and using the same
38 brake friction material formulation sold with a new motor vehicle.

1 (9) "Small volume motor vehicle manufacturer" means a manufacturer
2 of motor vehicles with Washington annual sales of less than one
3 thousand new passenger cars, light-duty trucks, medium-duty vehicles,
4 heavy-duty vehicles, and heavy-duty engines based on the average number
5 of vehicles sold for the three previous consecutive model years.

6 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2014, no
7 manufacturer, wholesaler, retailer, or distributor may sell or offer
8 for sale brake friction material in Washington state containing any of
9 the following constituents in an amount exceeding the specified
10 concentrations:

- 11 (a) Asbestiform fibers, 0.1 percent by weight.
- 12 (b) Cadmium and its compounds, 0.01 percent by weight.
- 13 (c) Chromium(VI)-salts, 0.1 percent by weight.
- 14 (d) Lead and its compounds, 0.1 percent by weight.
- 15 (e) Mercury and its compounds, 0.1 percent by weight.

16 (2) Beginning January 1, 2021, no manufacturer, wholesaler,
17 retailer, or distributor may sell or offer for sale brake friction
18 material in Washington state containing more than five percent copper
19 and its compounds by weight.

20 (3) Brake friction material manufactured prior to 2015 is exempt
21 from subsection (1) of this section for the purposes of clearing
22 inventory. This exemption expires January 1, 2025.

23 (4) Brake friction material manufactured prior to 2021 is exempt
24 from subsection (2) of this section for the purposes of clearing
25 inventory. This exemption expires January 1, 2031.

26 (5) Brake friction material manufactured as part of an original
27 equipment service contract for vehicles manufactured prior to January
28 1, 2015, is exempt from subsection (1) of this section.

29 (6) Brake friction material manufactured as part of an original
30 equipment service contract for vehicles manufactured prior to January
31 1, 2021, is exempt from subsection (2) of this section.

32 NEW SECTION. **Sec. 4.** (1) By December 1, 2015, the department
33 shall review risk assessments, scientific studies, and other relevant
34 analyses regarding alternative brake friction material and determine
35 whether the material may be available. The department shall consider

1 any new science with regard to the bioavailability and toxicity of
2 copper.

3 (2) If the department finds that alternative brake friction
4 material may be available, it shall convene a brake friction material
5 advisory committee. The committee shall include, but is not limited
6 to:

7 (a) A representative of the department, who will chair the
8 committee;

9 (b) The chief of the Washington state patrol, or the chief's
10 designee;

11 (c) A representative of manufacturers of brake friction material;

12 (d) A representative of manufacturers of motor vehicles;

13 (e) A representative of a nongovernmental organization concerned
14 with motor vehicle safety;

15 (f) A representative of the national highway traffic safety
16 administration; and

17 (g) A representative of a nongovernmental organization concerned
18 with the environment.

19 (3) If convened pursuant to subsection (2) of this section, the
20 committee shall separately assess alternative brake friction material
21 for passenger vehicles, light-duty vehicles, and heavy-duty vehicles.
22 The committee shall make different recommendations to the department as
23 to whether alternative brake friction material is available or
24 unavailable for passenger vehicles, light-duty vehicles, and heavy-duty
25 vehicles. For purposes of this section, "heavy-duty vehicle" means a
26 vehicle used for commercial purposes with a gross vehicle weight rating
27 above twenty-six thousand pounds. The committee shall also consider
28 appropriate exemptions including original equipment service and brake
29 friction material manufactured prior to the dates specified in section
30 5 of this act. The department shall consider the committee's
31 recommendations and make a finding as to whether alternative brake
32 friction material is available or unavailable.

33 (4) If, pursuant to subsection (3) of this section, the department
34 finds that alternative brake friction material:

35 (a) Is available, it shall comply with section 5 of this act;

36 (b) Is not available, it shall periodically evaluate the finding
37 and, if it determines that alternative brake friction material may be

1 available, comply with subsections (2) and (3) of this section. If the
2 department finds that alternative brake friction material is available,
3 it shall comply with section 5 of this act.

4 NEW SECTION. **Sec. 5.** If, pursuant to section 4 of this act, the
5 department finds that alternative brake friction material is available:

6 (1)(a) By December 31st of the year in which the finding is made,
7 the department shall publish the information required by section 4 of
8 this act in the Washington State Register and present it in a report to
9 the appropriate committees of the legislature; and

10 (b) The report must include recommendations for exemptions on
11 original equipment service and brake friction material manufactured
12 prior to dates specified in this section and may include
13 recommendations for other exemptions.

14 (2) Beginning eight years after the report in subsection (1) of
15 this section is published in the Washington State Register, no
16 manufacturer, wholesaler, retailer, or distributor may sell or offer
17 for sale brake friction material in Washington state containing more
18 than 0.5 percent copper and its compounds by weight, as specified in
19 the report.

20 (3) The department shall adopt rules to implement this section.

21 NEW SECTION. **Sec. 6.** Any motor vehicle manufacturer or brake
22 friction material manufacturer may apply to the department for an
23 exemption from this chapter for brake friction material intended for a
24 specific motor vehicle model or class of motor vehicles based on
25 special needs or characteristics of the motor vehicles for which the
26 brake friction material is intended. Exemptions may only be issued for
27 small volume motor vehicle manufacturers, specific motor vehicle
28 models, or special classes of vehicles, such as fire trucks, police
29 cars, and heavy or wide-load equipment hauling, provided the
30 manufacturer can demonstrate that complying with the requirements of
31 this chapter is not feasible, does not allow compliance with safety
32 standards, or causes significant financial hardship. Exemptions are
33 valid for no less than one year and may be renewed automatically as
34 needed or the exemption may be permanent for as long as the vehicle is
35 used in the manner described in the application.

1 NEW SECTION. **Sec. 7.** (1) By January 1, 2013, and at least every
2 three years thereafter, manufacturers of brake friction material sold
3 or offered for sale in Washington state shall provide data to the
4 department adequate to enable the department to determine
5 concentrations of antimony, copper, nickel, and zinc and their
6 compounds in brake friction material sold or offered for sale in
7 Washington state.

8 (2) Using data provided pursuant to subsection (1) of this section
9 and other data as needed, and in consultation with the brake friction
10 material manufacturing industry, the department must:

11 (a) By July 1, 2013, establish baseline concentration levels for
12 constituents identified in subsection (1) of this section in brake
13 friction material; and

14 (b) Track progress toward reducing the use of copper and its
15 compounds and ensure that concentration levels of antimony, nickel, or
16 zinc and their compounds do not increase by more than fifty percent
17 above baseline concentration levels.

18 (3) If concentration levels of antimony, nickel, or zinc and their
19 compounds in brake friction material increase by more than fifty
20 percent above baseline concentration levels, the department shall
21 review scientific studies to determine the potential impact of the
22 constituent on human health and the environment. If scientific studies
23 demonstrate the need for controlling the use of the constituent in
24 brake friction material, the department may consider recommending
25 limits on concentration levels of the constituent in the material.

26 (4) Confidential business information otherwise protected under RCW
27 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure.

28 NEW SECTION. **Sec. 8.** (1) Manufacturers of brake friction material
29 offered for sale in Washington state must certify compliance with the
30 requirements of this chapter and mark proof of certification on the
31 brake friction material in accordance with criteria developed under
32 this section.

33 (2) By December 1, 2012, the department must, after consulting with
34 interested parties, develop compliance criteria to meet the
35 requirements of this chapter. Compliance criteria includes, but is not
36 limited to:

1 (a) Self-certification of compliance by brake friction material
2 manufacturers using accredited laboratories; and

3 (b) Marked proof of certification, including manufacture date, on
4 brake friction material and product packaging. Marked proof of
5 certification must appear by January 1, 2015. Brake friction material
6 manufactured or packaged prior to January 1, 2015, is exempt from this
7 subsection (2)(b).

8 (3) Beginning January 1, 2021, manufacturers of new motor vehicles
9 offered for sale in Washington state must ensure that motor vehicles
10 are equipped with brake friction material certified to be compliant
11 with the requirements of this chapter.

12 NEW SECTION. **Sec. 9.** (1) The department shall enforce this
13 chapter. The department may periodically purchase and test brake
14 friction material sold or offered for sale in Washington state to
15 verify that the material complies with this chapter.

16 (2) Enforcement of this chapter by the department must rely on
17 notification and information exchange between the department and
18 manufacturers, distributors, and retailers. The department shall issue
19 one warning letter by certified mail to a manufacturer, distributor, or
20 retailer that sells or offers to sell brake friction material in
21 violation of this chapter, and offer information or other appropriate
22 assistance regarding compliance with this chapter. Once a warning
23 letter has been issued to a distributor or retailer for violations
24 under subsections (3) and (5) of this section, the department need not
25 provide warning letters for subsequent violations by that distributor
26 or retailer. For the purposes of subsection (6) of this section, a
27 warning letter serves as notice of the violation. If compliance is not
28 achieved, the department may assess penalties under this section.

29 (3) A brake friction material distributor or retailer that violates
30 this chapter is subject to a civil penalty not to exceed ten thousand
31 dollars for each violation. Brake friction material distributors or
32 retailers that sell brake friction material that is packaged consistent
33 with section 8(2)(b) of this act are not in violation of this chapter.
34 However, if the department conclusively proves that the brake friction
35 material distributor or retailer was aware that the brake friction
36 material being sold violates section 3 or 5 of this act, the brake

1 friction material distributor or retailer is subject to civil penalties
2 according to this section.

3 (4) A brake friction material manufacturer that knowingly violates
4 this chapter shall recall the brake friction material and reimburse the
5 brake friction distributor, retailer, or any other purchaser for the
6 material and any applicable shipping and handling charges for returning
7 the material. A brake friction material manufacturer that violates
8 this chapter is subject to a civil penalty not to exceed ten thousand
9 dollars for each violation.

10 (5) A motor vehicle distributor or retailer that violates this
11 chapter is subject to a civil penalty not to exceed ten thousand
12 dollars for each violation. A motor vehicle distributor or retailer is
13 not in violation of this chapter for selling a vehicle that was
14 previously sold at retail and that contains brake friction material
15 failing to meet the requirements of this chapter. However, if the
16 department conclusively proves that the motor vehicle distributor or
17 retailer installed brake friction material that violates section 3, 5,
18 or 8(2)(b) of this act on the vehicle being sold and was aware that the
19 brake friction material violates section 3, 5, or 8(2)(b) of this act,
20 the motor vehicle distributor or retailer is subject to civil penalties
21 under this section.

22 (6) A motor vehicle manufacturer that violates this chapter must
23 notify the registered owner of the vehicle within six months of
24 knowledge of the violation and must replace at no cost to the owner the
25 noncompliant brake friction material with brake friction material that
26 complies with this chapter. A motor vehicle manufacturer that fails to
27 provide the required notification to registered owners of the affected
28 vehicles within six months of knowledge of the violation is subject to
29 a civil penalty not to exceed one hundred thousand dollars. A motor
30 vehicle manufacturer that fails to provide the required notification to
31 registered owners of the affected vehicles after twelve months of
32 knowledge of the violation is subject to a civil penalty not to exceed
33 ten thousand dollars per vehicle. For purposes of this section, "motor
34 vehicle manufacturer" does not include a vehicle dealer defined under
35 RCW 46.70.011 and required to be licensed as a vehicle dealer under
36 chapter 46.70 RCW.

37 (7) Before the effective date of the prohibitions in section 3 or

1 5 of this act, the department shall prepare and distribute information
2 about the prohibitions to manufacturers, distributors, and retailers to
3 the maximum extent practicable.

4 (8) All penalties collected under this chapter must be deposited in
5 the state toxics control account created in RCW 70.105D.070.

6 NEW SECTION. **Sec. 10.** The department may adopt rules necessary to
7 implement this chapter.

8 NEW SECTION. **Sec. 11.** Sections 1 through 10 and 12 of this act
9 constitute a new chapter in Title 70 RCW.

10 NEW SECTION. **Sec. 12.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

14 Correct the title.

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