

# Senate Bill 341

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits certain persons from selling or offering for sale in this state brake friction material or motor vehicles with brake friction material containing specific amounts of certain elements or fibers. Becomes operative January 1, 2014.

Prohibits certain persons from selling or offering for sale in this state brake friction material or motor vehicles with brake friction material containing more than five percent copper and its compounds by weight. Becomes operative January 1, 2021.

Imposes civil penalties.

Directs Department of Environmental Quality to prepare report and present findings to Legislative Assembly if department determines that Brake Friction Advisory Committee in State of Washington has found that alternative brake friction material is available.

## A BILL FOR AN ACT

1  
2 Relating to motor vehicles.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 4, 7 and 13 to 16 of this 2011 Act:**

5 (1) **"Brake friction material" means that part of a motor vehicle brake designed to retard**  
6 **or stop the movement of a motor vehicle through friction against a rotor made of more du-**  
7 **rable material.**

8 (2) **"Distributor" means any person who stands between the manufacturer and the**  
9 **retailer in purchases, consignments or contracts for sale of brake friction material or motor**  
10 **vehicles.**

11 (3) **"Manufacturer" means any person who manufactures, assembles or produces brake**  
12 **friction material or motor vehicles.**

13 (4)(a) **"Motor vehicle" has the meaning given that term in ORS 801.360.**

14 (b) **Notwithstanding paragraph (a) of this subsection, "motor vehicle" does not include:**

15 (A) **Motorcycles as defined in ORS 801.365.**

16 (B) **Motor vehicles employing internal closed oil immersed motor vehicle brakes or other**  
17 **brake systems that are fully contained and emit no debris or fluid under normal operating**  
18 **conditions.**

19 (C) **Class I or Class III all-terrain vehicles as defined in ORS 801.190 and 801.194.**

20 (D) **Racing activity vehicles as defined in ORS 801.404.**

21 (E) **Vehicles owned by the United States Government.**

22 (F) **Antique vehicles as defined in ORS 801.125.**

23 (5)(a) **"Motor vehicle brake" means an energy conversion mechanism used to retard or**  
24 **stop the movement of a motor vehicle.**

25 (b) **"Motor vehicle brake" does not include brakes designed primarily to hold motor ve-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 hicles stationary and that are not for use while motor vehicles are in motion.

2 (6) "Original equipment service" means brake friction material provided as service parts  
 3 originally designed for and using the same brake friction material formulation sold with a  
 4 new motor vehicle.

5 (7) "Retailer" means any person who sells, offers or holds for sale brake friction material  
 6 or motor vehicles to ultimate consumers.

7 (8) "Wholesaler" means any person who sells, offers or holds for sale brake friction ma-  
 8 terial or motor vehicles to retailers, distributors or other wholesalers for resale.

9 **SECTION 2.** (1) A manufacturer, wholesaler, retailer or distributor may not sell or offer  
 10 for sale in this state brake friction material or motor vehicles with brake friction material  
 11 containing any of the following elements or fibers in an amount exceeding the following  
 12 specified concentrations:

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

18 (2) This section does not apply to motor vehicles previously sold at retail that contain  
 19 brake friction material failing to meet the requirements of subsection (1) of this section.

20 **SECTION 3.** (1) A manufacturer may apply to the Department of Environmental Quality  
 21 for an exemption from the requirements of section 2 of this 2011 Act for brake friction ma-  
 22 terial intended for a specific motor vehicle model or class of motor vehicles based on special  
 23 needs or characteristics of the motor vehicles for which the brake friction material is in-  
 24 tended.

25 (2) If the manufacturer demonstrates that complying with the requirements of section 2  
 26 of this 2011 Act is not feasible, does not allow compliance with safety standards or causes  
 27 significant financial hardship, the department may issue an exemption under this section to  
 28 the manufacturer.

29 (3) An exemption issued under this section is valid for one year from the date of issu-  
 30 ance.

31 (4) If the manufacturer demonstrates that the brake friction material is continuing to  
 32 be used in the manner described in the original application, the department may renew the  
 33 exemption. Each renewal is valid for one year from the date of issuance.

34 (5) The department may issue an exemption to a motor vehicle manufacturer under this  
 35 section only if the manufacturer has annual sales in this state of less than 1,000 motor ve-  
 36 hicles based on the average number of vehicles sold for the three previous consecutive model  
 37 years.

38 **SECTION 4.** (1) The Department of Environmental Quality may periodically purchase and  
 39 test brake friction material sold or offered for sale in this state to verify that the material  
 40 complies with section 2 of this 2011 Act.

41 (2) Prior to imposing a civil penalty under this section, the department shall issue one  
 42 warning letter by certified mail to a manufacturer, wholesaler, retailer or distributor that  
 43 sells or offers to sell brake friction material or a motor vehicle in violation of section 2 of  
 44 this 2011 Act. The warning letter shall also offer information or other appropriate assistance  
 45 regarding compliance with section 2 of this 2011 Act.

1       **(3) A manufacturer, wholesaler, retailer or distributor that violates section 2 of this 2011**  
2 **Act is subject to a civil penalty not to exceed \$10,000 for each violation.**

3       **(4) A brake friction material manufacturer that violates section 2 of this 2011 Act shall**  
4 **recall the brake friction material within six months of the violation and reimburse the**  
5 **wholesaler, retailer or distributor or any other purchaser for the brake friction material and**  
6 **any applicable shipping and handling charges for returning the brake friction material.**

7       **(5) A motor vehicle manufacturer that violates section 2 of this 2011 Act shall notify the**  
8 **registered owner of an affected vehicle within six months of the violation and replace the**  
9 **noncompliant brake friction material with brake friction material that complies with section**  
10 **2 of this 2011 Act at no cost to the owner. A motor vehicle manufacturer that fails to notify**  
11 **registered owners of the affected vehicles within six months after the violation is subject to**  
12 **a civil penalty not to exceed \$100,000. For purposes of this subsection, “motor vehicle man-**  
13 **ufacturer” does not include a person who has been issued a vehicle dealer certificate under**  
14 **ORS 822.020.**

15       **(6) The department shall impose civil penalties under this section in the manner provided**  
16 **in ORS 183.745.**

17       **SECTION 5. Section 2 of this 2011 Act applies to brake friction material that is sold or**  
18 **offered for sale in this state on or after January 1, 2014.**

19       **SECTION 6. Sections 1 to 4 of this 2011 Act become operative January 1, 2014.**

20       **SECTION 7. Manufacturers of brake friction material sold or offered for sale in this state**  
21 **shall certify compliance with the requirements of section 2 of this 2011 Act and mark the**  
22 **brake friction material with proof of certification according to the criteria provided by rules**  
23 **adopted by the Department of Environmental Quality under section 13 of this 2011 Act.**

24       **SECTION 8. Section 4 of this 2011 Act is amended to read:**

25       **Sec. 4.** (1) The Department of Environmental Quality may periodically purchase and test brake  
26 friction material sold or offered for sale in this state to verify that the material complies with [*sec-*  
27 *tion 2*] **sections 2 and 7** of this 2011 Act.

28       (2) Prior to imposing a civil penalty under this section, the department shall issue one warning  
29 letter by certified mail to a manufacturer, wholesaler, retailer or distributor that sells or offers to  
30 sell brake friction material or a motor vehicle in violation of section 2 **or 7** of this 2011 Act. The  
31 warning letter shall also offer information or other appropriate assistance regarding compliance  
32 with section 2 **or 7** of this 2011 Act.

33       (3) A manufacturer, wholesaler, retailer or distributor that violates section 2 **or 7** of this 2011  
34 Act is subject to a civil penalty not to exceed \$10,000 for each violation.

35       (4) A brake friction material manufacturer that violates section 2 **or 7** of this 2011 Act shall  
36 recall the brake friction material within six months of the violation and reimburse the wholesaler,  
37 retailer or distributor or any other purchaser for the brake friction material and any applicable  
38 shipping and handling charges for returning the brake friction material.

39       (5) A motor vehicle manufacturer that violates section 2 **or 7** of this 2011 Act shall notify the  
40 registered owner of an affected vehicle within six months of the violation and replace the  
41 noncompliant brake friction material with brake friction material that complies with [*section 2*]  
42 **sections 2 and 7** of this 2011 Act at no cost to the owner. A motor vehicle manufacturer that fails  
43 to notify registered owners of the affected vehicles within six months after the violation is subject  
44 to a civil penalty not to exceed \$100,000. For purposes of this subsection, “motor vehicle manufac-  
45 turer” does not include a person who has been issued a vehicle dealer certificate under ORS 822.020.

1 (6) The department shall impose civil penalties under this section in the manner provided in ORS  
2 183.745.

3 **SECTION 9.** Section 7 of this 2011 Act applies to brake friction material sold or offered  
4 for sale in this state on or after January 1, 2015.

5 **SECTION 10.** Section 7 of this 2011 Act and the amendments to section 4 of this 2011 Act  
6 by section 8 of this 2011 Act become operative January 1, 2015.

7 **SECTION 11.** Section 2 of this 2011 Act is amended to read:

8 **Sec. 2.** (1) A manufacturer, wholesaler, retailer or distributor may not sell or offer for sale in  
9 this state brake friction material or motor vehicles with brake friction material containing any of  
10 the following elements or fibers in an amount exceeding the following specified 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 **(f) Copper and its compounds, 5.0 percent by weight.**

17 (2) This section does not apply to motor vehicles previously sold at retail that contain brake  
18 friction material failing to meet the requirements of subsection (1) of this section.

19 **SECTION 12.** The amendments to section 2 of this 2011 Act by section 11 of this 2011 Act  
20 become operative January 1, 2021.

21 **SECTION 13.** (1) After consulting with interested parties, the Department of Environ-  
22 mental Quality shall adopt rules and develop compliance criteria to meet the requirements  
23 of section 7 of this 2011 Act. Compliance criteria include, but are not limited to:

24 (a) Self-certification of compliance by manufacturers using accredited laboratories; and

25 (b) Marked proof of certification, including the manufacture date on the brake friction  
26 material and product packaging.

27 (2) As used in this section, "accredited laboratory" means a laboratory that is:

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

30 (b) Accredited by a third-party organization approved by the Department of Environ-  
31 mental Quality to accredit laboratories for purposes of this section.

32 **SECTION 14.** Before January 1, 2014, the Department of Environmental Quality shall  
33 prepare and distribute to manufacturers, wholesalers, retailers and distributors information  
34 about the requirements established under section 2 of this 2011 Act.

35 **SECTION 15.** (1) The Department of Environmental Quality shall determine if the Brake  
36 Friction Advisory Committee in the State of Washington has found that alternative brake  
37 friction material is available.

38 (2) If the department determines that the Brake Friction Advisory Committee has found  
39 that alternative brake friction material is available, within one year of the date the depart-  
40 ment makes the determination, the department shall publish a report on the findings of the  
41 committee and present the report to the appropriate committees of the Legislative Assem-  
42 bly. The report must include recommendations for exemptions on original equipment service  
43 and brake friction material manufactured prior to the date of the report and recommen-  
44 dations on decreasing the amount of copper and its compounds allowed under section 2 of  
45 this 2011 Act as amended by section 11 of this 2011 Act to an amount that is equal to or less

1 than 0.5 percent copper and its compounds by weight.

2 (3) As used in this section, “alternative brake friction material” means brake friction  
3 material that:

4 (a) Does not contain:

5 (A) More than 0.5 percent copper and its compounds by weight;

6 (B) The elements and fibers identified in section 2 of this 2011 Act or the elements and  
7 fibers above the concentrations specified; and

8 (C) Other materials determined by the Department of Environmental Quality by rule to  
9 be more harmful to human health or the environment than existing brake friction material;

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

12 (c) Is available at a cost and in a quantity that does not cause significant financial  
13 hardship across the majority of brake friction material and motor vehicle manufacturing  
14 industries; and

15 (d) Is available to enable brake friction material and motor vehicle manufacturers to  
16 produce viable products meeting consumer expectations regarding braking noise, shuddering  
17 and durability.

18 SECTION 16. In accordance with applicable provisions of ORS chapter 183, the Depart-  
19 ment of Environmental Quality may adopt rules necessary for the administration and  
20 enforcement of sections 1 to 4, 7, and 13 to 16 of this 2011 Act.

21 SECTION 17. The Department of Environmental Quality may take any action before the  
22 operative dates specified in sections 6, 10 and 12 of this 2011 Act that is necessary to enable  
23 the department to exercise, on and after the operative dates specified in sections 6, 10 and  
24 12 of this 2011 Act, all the duties, functions and powers conferred on the department by  
25 sections 1 to 4, 7 and 13 to 16 of this 2011 Act.  
26