

## A-Engrossed Senate Bill 945

Ordered by the Senate May 2  
Including Senate Amendments dated May 2

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

### 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.

Prohibits manufacturers from selling or offering for sale, and other specified persons from knowingly selling or offering for sale, brake friction material or motor vehicles or trailers with brake friction material containing specific amounts of certain fibers or elements that are hazardous when released into state waterways. Becomes operative July 1, 2014.

Prohibits manufacturers from selling or offering for sale, and other specified persons from knowingly selling or offering for sale, brake friction material or motor vehicles or trailers with brake friction material containing more than five percent copper and its compounds by weight. Becomes operative January 1, 2021.

**Exempts motor vehicles and trailers previously sold at retail and specific motor vehicle models for which no more than 1,000 total units are sold annually in Oregon. Allows certain manufacturers to petition for exemption.**

**Does not apply to motor vehicles, trailers or brake friction material manufactured before specified dates or brake friction material made for use on those motor vehicles or trailers.**

Imposes civil penalties.

### A BILL FOR AN ACT

1 Relating to the regulation of hazardous materials in brake friction material.

2 Whereas brake friction material contains asbestiform fibers, cadmium, chromates, lead, mercury  
3 and copper; and

4 Whereas the braking of motor vehicles releases those fibers and elements into the environment,  
5 including this state's waterways; and

6 Whereas those fibers and elements constitute toxins when released into this state's waterways;  
7 and

8 Whereas copper is toxic to many aquatic organisms, including salmon; and

9 Whereas California and Washington have passed laws regulating the amount of those fibers and  
10 elements in brake friction material; now, therefore,

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

### 12 13 14 SUBSTANTIVE PROVISIONS OPERATIVE IN 2014 15 AND RELATED PROVISIONS 16

#### 17 **SECTION 1. As used in sections 1 to 4 and 7 of this 2011 Act:**

18 (1) **"Brake friction material" means the part of a vehicle brake designed to slow or stop**  
19 **the movement of a motor vehicle or trailer through friction against a rotor made of more**  
20 **durable material.**

21 (2) **"Commercial motor vehicle" has the meaning given that term in ORS 801.208.**

**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 (3) "Distributor" means a person that distributes brake friction material, motor vehicles  
2 or trailers from manufacturers to retailers.

3 (4) "Manufacturer" means a person that manufactures, assembles or produces brake  
4 friction material, motor vehicles or trailers.

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

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

7 (A) Motorcycles as defined in ORS 801.365.

8 (B) Mopeds as defined in ORS 801.345.

9 (C) Motor vehicles with internal closed oil-immersed brakes or other brake systems that  
10 are fully contained and emit no debris or fluid under normal operating conditions.

11 (D) Class I or Class III all-terrain vehicles as defined in ORS 801.190 and 801.194.

12 (E) Racing activity vehicles as defined in ORS 801.404.

13 (F) Vehicles owned by the United States Government.

14 (G) Antique vehicles as defined in ORS 801.125.

15 (6) "Retailer" means a person that sells or offers for sale brake friction material, motor  
16 vehicles or trailers to ultimate consumers.

17 (7) "Special class of motor vehicle" includes classes of commercial motor vehicles, fire  
18 trucks and police cars.

19 (8) "Trailer" means a vehicle without motive power designed to be drawn by a commer-  
20 cial motor vehicle.

21 (9)(a) "Vehicle brake" means an energy conversion mechanism used to slow or stop the  
22 movement of a motor vehicle or trailer.

23 (b) "Vehicle brake" does not include a brake that is designed primarily to hold a motor  
24 vehicle or trailer stationary and that is not for use while the motor vehicle or trailer is in  
25 motion.

26 (10) "Wholesaler" means a person that sells or offers for sale brake friction material,  
27 motor vehicles or trailers to retailers, distributors or other wholesalers for resale.

28 SECTION 2. (1) A manufacturer may not sell or offer for sale in this state, and a  
29 wholesaler, retailer or distributor may not knowingly sell or offer for sale in this state, brake  
30 friction material or motor vehicles or trailers with brake friction material containing any  
31 of the following fibers or elements in an amount exceeding the specified concentrations:

32 (a) Asbestiform fibers, 0.1 percent by weight.

33 (b) Cadmium and its compounds, 0.01 percent by weight.

34 (c) Chromium(VI) salts, 0.1 percent by weight.

35 (d) Lead and its compounds, 0.1 percent by weight.

36 (e) Mercury and its compounds, 0.1 percent by weight.

37 (2) This section does not apply to:

38 (a) The sale or offering for sale of a motor vehicle or trailer previously sold at retail; or

39 (b) The sale or offering for sale of a specific motor vehicle model:

40 (A) For which there are no more than 1,000 total units annually sold in this state, based  
41 on the average number of units sold during each of the three previous model years; and

42 (B) That requires the use of brake friction material that does not comply with this sec-  
43 tion.

44 (3) A manufacturer of a specific motor vehicle model or manufacturer of a special class  
45 of motor vehicles may apply to the Department of Environmental Quality for an exemption

1 from this section for brake friction material intended for use on a specific motor vehicle  
2 model or a special class of motor vehicles based on the special needs or characteristics of  
3 the motor vehicle model or special class of motor vehicles for which the brake friction ma-  
4 terial is intended.

5 (4) A manufacturer petitioning for an exemption under subsection (3) of this section must  
6 demonstrate to the satisfaction of the department that:

7 (a) Complying with the requirements of this section is not feasible, does not allow for  
8 compliance with state or federal safety standards or will cause significant financial hardship;  
9 or

10 (b) The manufacturer has received an exemption from another state that requires brake  
11 friction material to contain concentrations of fibers or elements in an amount that is equal  
12 to or less than the amounts specified in subsection (1) of this section.

13 (5) Exemptions granted under subsection (3) of this section are valid for no less than one  
14 year, may be renewed automatically and may be granted permanently for as long as the  
15 motor vehicle has the special need or characteristic described in the exemption application.

16 **SECTION 3.** (1) The Department of Environmental Quality may impose a civil penalty on  
17 a manufacturer, wholesaler, retailer or distributor that violates section 2 of this 2011 Act.  
18 A civil penalty imposed under this section may not exceed \$10,000 for each violation.

19 (2) The department may periodically purchase and test brake friction material sold or  
20 offered for sale in this state to verify that the material complies with section 2 of this 2011  
21 Act.

22 (3) Notwithstanding subsection (1) of this section, the department shall issue at least one  
23 warning letter by certified mail to a manufacturer, wholesaler, retailer or distributor that  
24 violates section 2 of this 2011 Act before imposing a civil penalty. The warning letter shall  
25 provide information on complying with section 2 of this 2011 Act.

26 (4) The department shall impose civil penalties under this section in the manner provided  
27 in ORS 183.745.

28 **SECTION 4.** (1) A brake friction material manufacturer that violates section 2 of this  
29 2011 Act shall recall the brake friction material within six months after discovering that the  
30 violation occurred and reimburse a wholesaler, retailer, distributor or ultimate consumer for  
31 the brake friction material and for the shipping and handling costs required to return the  
32 brake friction material.

33 (2) A motor vehicle manufacturer that violates section 2 of this 2011 Act shall notify the  
34 registered owner of the affected vehicle within six months after discovering that the vio-  
35 lation occurred and pay all costs associated with replacing the noncompliant brake friction  
36 material with brake friction material that complies with section 2 of this 2011 Act. For pur-  
37 poses of this subsection, “motor vehicle manufacturer” does not include a person that has  
38 been issued a vehicle dealer certificate under ORS 822.020 and is acting as a vehicle dealer  
39 as described in ORS 822.005 to 822.084.

40 (3) The Department of Environmental Quality may impose a civil penalty on a motor  
41 vehicle manufacturer that violates subsection (2) of this section. A civil penalty imposed  
42 under this section may not exceed \$10,000 for each violation or \$100,000 in the aggregate for  
43 all violations that occur within any three-month period.

44 (4) The department shall impose civil penalties under this section in the manner provided  
45 in ORS 183.745.

**SECTION 5.** Sections 1 to 4 of this 2011 Act become operative July 1, 2014.

**SECTION 6.** (1) Sections 1 to 4 of this 2011 Act apply to brake friction material and motor vehicles and trailers with brake friction material sold or offered for sale in this state on or after July 1, 2014.

(2) Notwithstanding subsection (1) of this section, sections 1 to 4 of this 2011 Act do not apply to:

(a) Motor vehicles or trailers that are manufactured before July 1, 2014;

(b) Brake friction material that is manufactured before July 1, 2014; or

(c) Brake friction material made for use on motor vehicles or trailers that are manufactured before July 1, 2014.

**SUBSTANTIVE PROVISIONS OPERATIVE IN 2015  
AND RELATED PROVISIONS**

**SECTION 7.** (1) Manufacturers of brake friction material sold or offered for sale in this state shall:

(a) Certify compliance with section 2 of this 2011 Act with a third-party organization or accredited laboratory that has been approved by the Department of Environmental Quality; and

(b) Mark brake friction material sold or offered for sale in this state with proof of certification in a manner prescribed by the department by rule.

(2) A third-party organization must use an accredited laboratory for purposes of certifying brake friction material under this section.

(3) As used in this section, “accredited laboratory” means a laboratory that is:

(a) Qualified to test products, materials, equipment and installations in accordance with national or international standards; and

(b) Accredited by a third-party organization approved by the department to accredit laboratories under this section.

**SECTION 8.** Section 3 of this 2011 Act is amended to read:

**Sec. 3.** (1) The Department of Environmental Quality may impose a civil penalty on a manufacturer, wholesaler, retailer or distributor that violates section 2 or 7 of this 2011 Act. A civil penalty imposed under this section may not exceed \$10,000 for each violation.

(2) The department may periodically purchase and test brake friction material sold or offered for sale in this state to verify that the material complies with [section 2] sections 2 and 7 of this 2011 Act.

(3) Notwithstanding subsection (1) of this section, the department shall issue at least one warning letter by certified mail to a manufacturer, wholesaler, retailer or distributor that violates section 2 or 7 of this 2011 Act before imposing a civil penalty. The warning letter shall provide information on complying with section 2 or 7 of this 2011 Act.

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

**SECTION 9.** Section 7 of this 2011 Act and the amendments to section 3 of this 2011 Act by section 8 of this 2011 Act become operative January 1, 2015.

**SECTION 10.** (1) Section 7 of this 2011 Act and the amendments to section 3 of this 2011 Act by section 8 of this 2011 Act apply to brake friction material and motor vehicles and

1 **trailers with brake friction material sold or offered for sale in this state on or after January**  
2 **1, 2015.**

3 **(2) Notwithstanding subsection (1) of this section, section 7 of this 2011 Act and the**  
4 **amendments to section 3 of this 2011 Act by section 8 of this 2011 Act do not apply to:**

5 **(a) Motor vehicles or trailers that are manufactured before July 1, 2014;**

6 **(b) Brake friction material that is manufactured before July 1, 2014; or**

7 **(c) Brake friction material made for use on motor vehicles or trailers that are manu-**  
8 **factured before July 1, 2014.**

9  
10 **SUBSTANTIVE PROVISIONS OPERATIVE IN 2021**  
11 **AND RELATED PROVISIONS**  
12

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

14 **Sec. 2.** (1) A manufacturer may not sell or offer for sale in this state, and a wholesaler, retailer  
15 or distributor may not knowingly sell or offer for sale in this state, brake friction material or motor  
16 vehicles or trailers with brake friction material containing any of the following fibers or elements  
17 in an amount exceeding the specified concentrations:

18 (a) Asbestiform fibers, 0.1 percent by weight.

19 (b) Cadmium and its compounds, 0.01 percent by weight.

20 (c) Chromium(VI) salts, 0.1 percent by weight.

21 (d) Lead and its compounds, 0.1 percent by weight.

22 (e) Mercury and its compounds, 0.1 percent by weight.

23 **(f) Copper and its compounds, five percent by weight.**

24 (2) This section does not apply to:

25 (a) The sale or offering for sale of a motor vehicle or trailer previously sold at retail; or

26 (b) The sale or offering for sale of a specific motor vehicle model:

27 (A) For which there are no more than 1,000 total units annually sold in this state, based on the  
28 average number of units sold during each of the three previous model years; and

29 (B) That requires the use of brake friction material that does not comply with this section.

30 (3) A manufacturer of a specific motor vehicle model or manufacturer of a special class of motor  
31 vehicles may apply to the Department of Environmental Quality for an exemption from this section  
32 for brake friction material intended for use on a specific motor vehicle model or a special class of  
33 motor vehicles based on the special needs or characteristics of the motor vehicle model or special  
34 class of motor vehicles for which the brake friction material is intended.

35 (4) A manufacturer petitioning for an exemption under subsection (3) of this section must dem-  
36 onstrate to the satisfaction of the department that:

37 (a) Complying with the requirements of this section is not feasible, does not allow for compliance  
38 with state or federal safety standards or will cause significant financial hardship; or

39 (b) The manufacturer has received an exemption from another state that requires brake friction  
40 material to contain concentrations of fibers or elements in an amount that is equal to or less than  
41 the amounts specified in subsection (1) of this section.

42 (5) Exemptions granted under subsection (3) of this section are valid for no less than one year,  
43 may be renewed automatically and may be granted permanently for as long as the motor vehicle has  
44 the special need or characteristic described in the exemption application.

45 **SECTION 12.** The amendments to section 2 of this 2011 Act by section 11 of this 2011 Act

1 become operative January 1, 2021.

2 **SECTION 13.** (1) The amendments to section 2 of this 2011 Act by section 11 of this 2011  
3 Act apply to brake friction material and motor vehicles and trailers with brake friction ma-  
4 terial sold or offered for sale in this state on or after January 1, 2021.

5 (2) Notwithstanding subsection (1) of this section, the amendments to section 2 of this  
6 2011 Act by section 11 of this 2011 Act do not apply to:

7 (a) Motor vehicles or trailers that are manufactured before January 1, 2021;

8 (b) Brake friction material that is manufactured before January 2, 2021; or

9 (c) Brake friction material made for use on motor vehicles or trailers that are manu-  
10 factured before January 1, 2021.

11  
12 **ADDITION TO WATER QUALITY LAW**  
13 **AND CONSISTENCY OF REGULATION**  
14

15 **SECTION 14.** Sections 1 to 4, 7 and 15 of this 2011 Act are added to and made a part of  
16 ORS chapter 468B.

17 **SECTION 15.** To the extent practicable, the Department of Environmental Quality shall  
18 consult and coordinate with other states to achieve interstate consistency in the implemen-  
19 tation of sections 1 to 4 and 7 of this 2011 Act.

20  
21 **STUDY REQUIREMENTS**  
22

23 **SECTION 16.** (1) The Department of Environmental Quality shall determine whether the  
24 Brake Friction Material Advisory Committee in the State of Washington has found that al-  
25 ternative brake friction material is available.

26 (2) If the department determines that the Brake Friction Material Advisory Committee  
27 has found that alternative brake friction material is available, the department, within one  
28 year after making the determination, shall publish a report on the findings of the committee  
29 and present the report to the appropriate committees of the Legislative Assembly. The re-  
30 port must include:

31 (a) Recommendations on decreasing the amount of copper and its compounds allowed  
32 under section 2 of this 2011 Act as amended by section 11 of this 2011 Act to an amount that  
33 is equal to or less than 0.5 percent by weight;

34 (b) Recommendations for exemptions, including exemptions for:

35 (A) Original equipment service and after-market brake friction material; and

36 (B) Brake friction material manufactured prior to the date of the report; and

37 (c) Recommendations for an amount of time sufficient to allow manufacturers to comply  
38 with the recommendations made by the department under paragraph (a) of this subsection.

39 (3) Notwithstanding subsection (2) of this section, the department may include in the  
40 report recommendations for commercial motor vehicles that are different from recommen-  
41 dations for other types of motor vehicles.

42 (4) As used in this section, "alternative brake friction material" means brake friction  
43 material that:

44 (a) Does not contain:

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

1       **(B) The fibers and elements identified in section 2 of this 2011 Act above the concen-**  
2 **trations specified in section 2 of this 2011 Act; and**

3       **(C) Other materials determined by the department to be more harmful to human health**  
4 **or the environment than existing brake friction material;**

5       **(b) Enables vehicle brakes to meet applicable federal safety standards or, if no federal**  
6 **safety standards exist, widely accepted industry standards;**

7       **(c) Is available at a cost and in a quantity that does not cause significant financial**  
8 **hardship to a majority of manufacturers; and**

9       **(d) Is available to enable manufacturers to produce viable products that meet consumer**  
10 **expectations regarding braking noise, shuddering and durability.**

11       **(5) The definitions in section 1 of this 2011 Act apply to this section.**

12       **SECTION 17. Section 16 of this 2011 Act is repealed January 2, 2026.**

13  
14   **UNIT CAPTIONS**

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16       **SECTION 18. The unit captions used in this 2011 Act are provided only for the conven-**  
17 **ience of the reader and do not become part of the statutory law of this state or express any**  
18 **legislative intent in the enactment of this 2011 Act.**

19   \_\_\_\_\_