

Senate Bill 945

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 **as introduced**.

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.

Imposes civil penalties.

A BILL FOR AN ACT

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

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

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

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

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

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

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

SUBSTANTIVE PROVISIONS OPERATIVE IN 2014 AND RELATED PROVISIONS

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

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

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

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

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

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

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 (B) Mopeds as defined in ORS 801.345.

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

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

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

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

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

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

10 (6) "Small-scale business" means a manufacturer, wholesaler, retailer or distributor that
11 has annual sales in this state of no more than 1,000 units of a type of motor vehicle with
12 special needs or characteristics that necessitate the use of brake friction material that does
13 not comply with section 2 of this 2011 Act.

14 (7) "Trailer" means a vehicle without motive power designed to be drawn by a motor
15 vehicle.

16 (8)(a) "Vehicle brake" means an energy conversion mechanism used to slow or stop the
17 movement of a motor vehicle or trailer.

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

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

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

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

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

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

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

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

32 (2) This section does not apply to:

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

34 (b) Small-scale businesses.

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

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

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

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

1 in ORS 183.745.

2 **SECTION 4.** (1) A brake friction material manufacturer that violates section 2 of this
 3 2011 Act shall recall the brake friction material within six months after discovering that the
 4 violation occurred and reimburse a wholesaler, retailer, distributor or ultimate consumer for
 5 the brake friction material and for the shipping and handling costs required to return the
 6 brake friction material.

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

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

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

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

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

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

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

27 (b) Brake friction material made for use on motor vehicles or trailers that are manu-
 28 factured before July 1, 2014.

29
 30 **SUBSTANTIVE PROVISIONS OPERATIVE IN 2015**
 31 **AND RELATED PROVISIONS**
 32

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

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

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

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

41 (3) As used in this section, “accredited laboratory” means a laboratory that is qualified
 42 to test products, materials, equipment and installations in accordance with national or
 43 international standards.

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

45 **Sec. 3.** (1) The Department of Environmental Quality may impose a civil penalty on a man-

1 manufacturer, wholesaler, retailer or distributor that violates section 2 **or 7** of this 2011 Act. A civil
 2 penalty imposed under this section may not exceed \$10,000 for each violation.

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

6 (3) Notwithstanding subsection (1) of this section, the department shall issue at least one warn-
 7 ing letter by certified mail to a manufacturer, wholesaler, retailer or distributor that violates section
 8 **2 or 7** of this 2011 Act before imposing a civil penalty. The warning letter shall provide information
 9 on complying with section 2 **or 7** of this 2011 Act.

10 (4) The department shall impose civil penalties under this section in the manner provided in ORS
 11 183.745.

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

14 **SECTION 10. (1) Section 7 of this 2011 Act and the amendments to section 3 of this 2011**
 15 **Act by section 8 of this 2011 Act apply to brake friction material and motor vehicles and**
 16 **trailers with brake friction material sold or offered for sale in this state on or after January**
 17 **1, 2015.**

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

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

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

23
 24 **SUBSTANTIVE PROVISIONS OPERATIVE IN 2021**
 25 **AND RELATED PROVISIONS**
 26

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

28 **Sec. 2. (1) A manufacturer may not sell or offer for sale in this state, and a wholesaler, retailer**
 29 **or distributor may not knowingly sell or offer for sale in this state, brake friction material or motor**
 30 **vehicles or trailers with brake friction material containing any of the following fibers or elements**
 31 **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 **(f) Copper and its compounds, five percent by weight.**

38 (2) **This section does not apply to:**

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

40 (b) **Small-scale businesses.**

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

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

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

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

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

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7 **STUDY REQUIREMENTS**

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9 **SECTION 14.** (1) The Department of Environmental Quality shall determine whether the
10 Brake Friction Material Advisory Committee in the State of Washington has found that al-
11 ternative brake friction material is available.

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

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

20 (b) Recommendations for exemptions, including exemptions for original equipment ser-
21 vice, after-market brake friction material and brake friction material manufactured prior to
22 the date of the report.

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

25 (a) Does not contain:

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

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

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

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

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

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

37 (4) The definitions in section 1 of this 2011 Act apply to this section.

38 **SECTION 15.** Section 14 of this 2011 Act is repealed January 2, 2022.

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40 **UNIT CAPTIONS**

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