

Minority Report
A-Engrossed
Senate Bill 945

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

Sponsored by nonconcurring members of the Senate Committee on Environment and Natural Resources: Senators OLSEN, THOMSEN

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*], **including copper and its compounds, by weight. Becomes operative on day after date on which Legislative Counsel receives notice from Department of Environmental Quality that United States Environmental Protection Agency has adopted regulations that prohibit manufacturing of brake friction material that contains those fibers and elements at or below specified concentrations.**

[*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.

Creates work group for purposes related to monitoring of brake friction material.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the regulation of hazardous materials in brake friction material; and declaring an
3 emergency.

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

5
6 **DEFINITIONS**

7
8 **SECTION 1. As used in sections 1 to 5 of this 2011 Act:**

9 (1) **“Brake friction material” means the part of a vehicle brake designed to slow or stop**
10 **the movement of a motor vehicle or trailer through friction against a rotor made of more**
11 **durable material.**

12 (2) **“Commercial motor vehicle” has the meaning given that term in ORS 801.208.**

13 (3) **“Distributor” means a person that distributes brake friction material, motor vehicles**
14 **or trailers from manufacturers to retailers.**

15 (4) **“Manufacturer” means a person that manufactures, assembles or produces brake**

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 **friction material, motor vehicles or trailers.**

2 (5)(a) **“Motor vehicle” has the meaning given that term in ORS 801.360.**

3 (b) **Notwithstanding paragraph (a) of this subsection, “motor vehicle” does not include:**

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

5 (B) **Mopeds as defined in ORS 801.345.**

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

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

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

10 (F) **Vehicles owned by the United States Government.**

11 (G) **Antique vehicles as defined in ORS 801.125.**

12 (6) **“Retailer” means a person that sells or offers for sale brake friction material, motor**
13 **vehicles or trailers to ultimate consumers.**

14 (7) **“Special class of motor vehicle” includes classes of commercial motor vehicles, fire**
15 **trucks and police cars.**

16 (8) **“Trailer” means a vehicle without motive power designed to be drawn by a commer-**
17 **cial motor vehicle.**

18 (9)(a) **“Vehicle brake” means an energy conversion mechanism used to slow or stop the**
19 **movement of a motor vehicle or trailer.**

20 (b) **“Vehicle brake” does not include a brake that is designed primarily to hold a motor**
21 **vehicle or trailer stationary and that is not for use while the motor vehicle or trailer is in**
22 **motion.**

23 (10) **“Wholesaler” means a person that sells or offers for sale brake friction material,**
24 **motor vehicles or trailers to retailers, distributors or other wholesalers for resale.**

25
26 **PROHIBITIONS AND EXEMPTIONS**
27

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

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

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

45 (3) **A manufacturer of a specific motor vehicle model or manufacturer of a special class**

1 of motor vehicles may apply to the Department of Environmental Quality for an exemption
2 from this section for brake friction material intended for use on a specific motor vehicle
3 model or a special class of motor vehicles based on the special needs or characteristics of
4 the motor vehicle model or special class of motor vehicles for which the brake friction ma-
5 terial is intended.

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

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

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

14 (5) Exemptions granted under subsection (3) of this section are valid for no less than one
15 year, may be renewed automatically and may be granted permanently for as long as the
16 motor vehicle has the special need or characteristic described in the exemption application.
17

18 CERTIFICATION OF COMPLIANCE

19
20 **SECTION 3.** (1) Manufacturers of brake friction material sold or offered for sale in this
21 state shall:

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

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

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

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

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

32 (b) Accredited by a third-party organization approved by the department to accredit lab-
33 oratories under this section.
34

35 CIVIL PENALTIES

36
37 **SECTION 4.** (1) The Department of Environmental Quality may impose a civil penalty on
38 a manufacturer, wholesaler, retailer or distributor that violates section 2 or 3 of this 2011
39 Act. A civil penalty imposed under this section may not exceed \$10,000 for each violation.

40 (2) The department may periodically purchase and test brake friction material sold or
41 offered for sale in this state to verify that the material complies with sections 2 and 3 of this
42 2011 Act.

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

1 shall provide information on complying with section 2 or 3 of this 2011 Act.

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

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

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

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

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

22
23 **APPLICATION**
24

25 **SECTION 6.** (1) Sections 1 to 5 of this 2011 Act apply to brake friction material and motor
26 vehicles and trailers with brake friction material sold or offered for sale in this state on or
27 after the operative date described in section 9 of this 2011 Act.

28 (2) Notwithstanding subsection (1) of this section, sections 1 to 5 of this 2011 Act do not
29 apply:

30 (a) Motor vehicles or trailers that are manufactured before the operative date described
31 in section 9 of this 2011 Act;

32 (b) Brake friction material that is manufactured before the operative date described in
33 section 9 of this 2011 Act; or

34 (c) Brake friction material made for use on motor vehicles or trailers that are manu-
35 factured before the operative date described in section 9 of this 2011 Act.

36
37 **ADDITION TO WATER QUALITY LAW**
38 **AND CONSISTENCY OF REGULATION**
39

40 **SECTION 7.** Sections 1 to 5 and 8 of this 2011 Act are added to and made a part of ORS
41 chapter 468B.

42 **SECTION 8.** To the extent practicable, the Department of Environmental Quality shall
43 consult and coordinate with other states to achieve interstate consistency in the implemen-
44 tation of sections 1 to 5 of this 2011 Act.

OPERATIVE DATE

SECTION 9. (1) The Department of Environmental Quality shall notify the Legislative Counsel upon determining that the United States Environmental Protection Agency has adopted regulations that prohibit the manufacturing of brake friction material that contains the fibers and elements identified in section 2 of this 2011 Act at or below the concentrations specified in section 2 of this 2011 Act.

(2) Sections 1 to 5 and 8 of this 2011 Act become operative the day after the date on which the Legislative Counsel receives notice from the Department of Environmental Quality under this section.

WORK GROUP

SECTION 10. (1) A work group for purposes described in subsection (2) of this section is established, consisting of 10 members appointed as follows:

(a) The President of the Senate shall appoint one state Senator who serves on a committee or interim committee related to the environment or natural resources as a nonvoting member.

(b) The Speaker of the House of Representatives shall appoint one state Representative who serves on a committee or interim committee related to the environment or natural resources as a nonvoting member.

(c) The members appointed under paragraphs (a) and (b) of this subsection shall jointly appoint the following eight members:

(A) One member who represents motor vehicle parts manufacturers;

(B) One member who represents motor vehicle parts wholesalers;

(C) One member who represents the automotive industry;

(D) One member who represents retailers of motor vehicles or motor vehicle parts;

(E) One member who represents the Department of Environmental Quality;

(F) One member who represents a nonprofit environmental group located in Oregon; and

(G) Two members who represent the general public and who have an interest or expertise in automotive repair or motor vehicle part manufacturing.

(2) The work group shall:

(a) Develop a program for identifying brake friction material that contains the fibers and elements identified in section 2 of this 2011 Act at or below the concentrations specified in section 2 of this 2011 Act;

(b) Develop a logo or label that manufacturers, distributors or retailers of brake friction material described in paragraph (a) of this subsection may use to mark the brake friction material; and

(c) Administer a public education campaign regarding the manufacturing, distribution and selling of brake friction material described in paragraph (a) of this subsection.

(3) A majority of the voting members of the work group constitutes a quorum for the transaction of business.

(4) Official action by the work group requires the approval of a majority of the voting members of the work group.

(5) If there is a vacancy for any cause, the appointing authority shall make an appoint-

1 ment to become immediately effective.

2 (6) The voting members of the work group shall elect one of its voting members to serve
3 as chairperson.

4 (7) The work group shall meet at times and places specified by the call of the chairperson
5 or of a majority of the voting members of the work group.

6 (8) The work group may adopt rules necessary for the operation of the work group.

7 (9) The work group shall make a report, and may include recommendations for legis-
8 lation, to an interim committee of the Legislative Assembly related to the environment or
9 natural resources on or before October 1 of each even-numbered year.

10 (10) Members of the work group are not entitled to compensation or expenses.

11 (11) All agencies of state government, as defined in ORS 174.111, are directed to assist
12 the work group in the performance of its duties and, to the extent permitted by laws relating
13 to confidentiality, to furnish such information and advice as the members of the work group
14 consider necessary to perform their duties.

15 **SECTION 11.** Section 10 of this 2011 Act is repealed on the day after the operative date
16 described in section 9 of this 2011 Act.

17
18 **UNIT CAPTIONS**

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20 **SECTION 12.** The unit captions used in this 2011 Act are provided only for the conven-
21 ience of the reader and do not become part of the statutory law of this state or express any
22 legislative intent in the enactment of this 2011 Act.

23
24 **EMERGENCY CLAUSE**

25
26 **SECTION 13.** This 2011 Act being necessary for the immediate preservation of the public
27 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
28 on its passage.

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