

10871

I N A S S E M B L Y

April 27, 2010

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to limiting the use of certain substances in brake friction material

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that brake
2 friction is an essential component of motor vehicle brakes and is crit-
3 ically important to transportation safety and public safety in general.
4 Debris from brake friction materials containing copper and its compounds
5 is generated and released into the environment during normal operation
6 of motor vehicle brakes. Thousands of pounds of copper and other
7 substances released from brake friction material enter New York State
8 streams, rivers and marine environments as a result of the normal opera-
9 tion of motor vehicle brakes. The legislature finds that brake friction
10 materials are toxic to many aquatic and marine organisms and must be
11 regulated to ensure the quality, safety, and health of the state's
12 waterways.

13 S 2. The vehicle and traffic law is amended by adding a new section
14 382-d to read as follows:

15 S 382-D. BRAKE FRICTION MATERIAL. 1. DEFINITIONS. (A) "ALTERNATIVE
16 BRAKE FRICTION MATERIAL" MEANS BRAKE MATERIAL THAT: (I) DOES NOT
17 CONTAIN: (A) MORE THAN 0.5 PERCENT COPPER OR ITS COMPOUNDS BY WEIGHT;
18 (B) THE CONSTITUENTS IDENTIFIED IN SUBDIVISION TWO OF THIS SECTION AT OR
19 ABOVE THE CONCENTRATIONS SPECIFIED; OR (C) OTHER MATERIALS DETERMINED BY
20 THE DEPARTMENT TO BE MORE HARMFUL TO HUMAN HEALTH OR THE ENVIRONMENT
21 THAN EXISTING BRAKE FRICTION MATERIAL; (II) ENABLES MOTOR VEHICLE BRAKES
22 TO MEET APPLICABLE FEDERAL SAFETY STANDARDS, OR IF NO FEDERAL SAFETY
23 STANDARD EXISTS, A WIDELY ACCEPTED INDUSTRY STANDARD; (III) IS AVAILABLE
24 AT A COST AND QUANTITY THAT DOES NOT CAUSE SIGNIFICANT FINANCIAL HARD-
25 SHIP ACROSS A MAJORITY OF BRAKE FRICTION MATERIAL AND VEHICLE MANUFAC-
26 TURING INDUSTRIES; AND (IV) IS AVAILABLE TO ENABLE BRAKE FRICTION MATE-
27 RIAL AND VEHICLE MANUFACTURERS TO PRODUCE VIABLE PRODUCTS MEETING
28 CONSUMER EXPECTATIONS REGARDING BRAKE NOISE, SHUDDERING AND DURABILITY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (B) "BRAKE FRICTION MATERIAL" MEANS THAT PART OF A MOTOR VEHICLE BRAKE
2 DESIGNED TO SLOW OR STOP THE MOVEMENT OF A MOTOR VEHICLE THROUGH FRIC-
3 TION MADE AGAINST A ROTOR OR MORE DURABLE MATERIAL.

4 (C) "MOTOR VEHICLE" MEANS A VEHICLE AS DEFINED BY SECTION ONE HUNDRED
5 TWENTY-FIVE OF THIS CHAPTER.

6 (D) "MOTOR VEHICLE BRAKE" MEANS AN ENERGY CONVERSION MECHANISM USED TO
7 SLOW OR STOP THE MOVEMENT OF A MOTOR VEHICLE BUT DOES NOT INCLUDE BRAKES
8 DESIGNED PRIMARILY TO HOLD MOTOR VEHICLES STATIONARY AND ARE NOT FOR USE
9 WHILE MOTOR VEHICLES ARE IN MOTION.

10 (E) "ORIGINAL EQUIPMENT SERVICE" MEANS BRAKE FRICTION MATERIAL
11 PROVIDED AS SERVICE PARTS ORIGINALLY DESIGNED FOR AND USING THE SAME
12 BRAKE FRICTION MATERIAL FORMULATION SOLD WITH A NEW MOTOR VEHICLE.

13 (F) "SMALL VOLUME MOTOR VEHICLE MANUFACTURER" MEANS A MANUFACTURER OF
14 MOTOR VEHICLES WITH ANNUAL SALES IN NEW YORK OF LESS THAN ONE THOUSAND
15 NEW PASSENGER CARS, LIGHT-DUTY VEHICLES, HEAVY-DUTY VEHICLES, AND HEAVY-
16 Y-DUTY ENGINES BASED ON THE AVERAGE NUMBER OF VEHICLES SOLD FOR THE
17 THREE PREVIOUS CONSECUTIVE MODEL YEARS.

18 2. PROHIBITIONS ON BRAKE FRICTION MATERIAL. (A) BEGINNING JANUARY
19 FIRST, TWO THOUSAND THIRTEEN, NO MANUFACTURER, WHOLESALER, RETAILER, OR
20 DISTRIBUTOR MAY SELL OR OFFER FOR SALE BRAKE FRICTION MATERIAL IN NEW
21 YORK STATE CONTAINING ANY OF THE FOLLOWING CONSTITUENTS IN AN AMOUNT
22 EXCEEDING THE SPECIFIED CONCENTRATIONS:

23 (I) ASBESTIFORM FIBERS: 0.1 PERCENT BY WEIGHT;

24 (II) CADMIUM AND ITS COMPOUNDS: 0.01 PERCENT BY WEIGHT;

25 (III) CHROMIUM (VI) SALTS: 0.1 PERCENT BY WEIGHT;

26 (IV) LEAD AND ITS COMPOUNDS: 0.1 PERCENT BY WEIGHT;

27 (V) MERCURY AND ITS COMPOUNDS: 0.1 PERCENT BY WEIGHT.

28 (B) BEGINNING ON JANUARY FIRST, TWO THOUSAND TWENTY NO MANUFACTURER,
29 WHOLESALER, RETAILER, OR DISTRIBUTOR MAY SELL OR OFFER FOR SALE BRAKE
30 FRICTION MATERIAL IN NEW YORK STATE CONTAINING MORE THAN FIVE PERCENT
31 COPPER AND ITS COMPOUNDS BY WEIGHT.

32 (C) BRAKE FRICTION MATERIAL MANUFACTURED PRIOR TO TWO THOUSAND FOUR-
33 TEEN IS EXEMPT FROM THE DEADLINE MANDATED BY PARAGRAPH (A) OF THIS
34 SUBDIVISION FOR THE PURPOSES OF CLEARING INVENTORY; PROVIDED, HOWEVER
35 THAT SUCH EXEMPTION SHALL NOT EXTEND BEYOND JANUARY FIRST, TWO THOUSAND
36 TWENTY.

37 (D) BRAKE FRICTION MATERIAL MANUFACTURED PRIOR TO TWO THOUSAND TWENTY
38 IS EXEMPT FROM THE DEADLINE MANDATED BY PARAGRAPH (B) OF THIS SUBDIVI-
39 SION FOR THE PURPOSES OF CLEARING INVENTORY; PROVIDED, HOWEVER, THAT
40 SUCH EXEMPTION SHALL NOT EXTEND BEYOND JANUARY FIRST, TWO THOUSAND TWEN-
41 TY-FIVE.

42 (E) BRAKE FRICTION MATERIAL MANUFACTURED AS PART OF AN ORIGINAL EQUIP-
43 MENT SERVICE CONTRACT FOR VEHICLES MANUFACTURED PRIOR TO JANUARY FIRST,
44 TWO THOUSAND FOURTEEN, IS EXEMPT FROM THE DEADLINE MANDATED IN PARAGRAPH
45 (A) OF THIS SUBDIVISION.

46 (F) BRAKE FRICTION MATERIAL MANUFACTURED AS PART OF AN ORIGINAL EQUIP-
47 MENT SERVICE CONTRACT FOR VEHICLES MANUFACTURED PRIOR TO JANUARY FIRST,
48 TWO THOUSAND TWENTY, IS EXEMPT FROM THE DEADLINE MANDATED IN PARAGRAPH
49 (B) OF THIS SUBDIVISION.

50 3. DEPARTMENT REVIEW OF ALTERNATIVE BRAKE FRICTION MATERIAL. (A) ON OR
51 BEFORE DECEMBER FIRST, TWO THOUSAND FOURTEEN, THE DEPARTMENT SHALL
52 REVIEW RISK ASSESSMENTS, SCIENTIFIC STUDIES, AND OTHER RELEVANT ANALYSES
53 REGARDING BRAKE FRICTION MATERIAL AND DETERMINE WHETHER THE MATERIAL MAY
54 BE AVAILABLE. THE DEPARTMENT SHALL CONSIDER ANY NEW SCIENCE WITH REGARD
55 TO THE BIOAVAILABILITY AND TOXICITY OF COPPER.

1 (B) IF THE DEPARTMENT FINDS THE ALTERNATIVE BRAKE FRICTION MATERIAL
2 MAY BE AVAILABLE, IT SHALL:

3 (I) BY DECEMBER THIRTY-FIRST OF THE YEAR THE FINDING IS MADE, PUBLISH
4 SUCH INFORMATION AND PRESENT IT IN A REPORT TO THE APPROPRIATE LEGISLA-
5 TIVE COMMITTEES. SUCH REPORT SHALL INCLUDE RECOMMENDATIONS FOR
6 EXEMPTIONS ON ORIGINAL EQUIPMENT SERVICE AND BRAKE FRICTION MATERIAL
7 MANUFACTURED PRIOR TO DATES SPECIFIED IN THIS SECTION AND MAY INCLUDE
8 RECOMMENDATIONS FOR OTHER EXEMPTIONS; AND

9 (II) CONVENE A BRAKE FRICTION MATERIAL ADVISORY COMMITTEE WHICH SHALL
10 INCLUDE:

11 (A) THE COMMISSIONER, OR HIS OR HER DESIGNEE, WHO WILL CHAIR THE
12 COMMITTEE;

13 (B) A REPRESENTATIVE OF MANUFACTURERS OF BRAKE FRICTION MATERIAL;

14 (C) A REPRESENTATIVE OF MANUFACTURERS OF MOTOR VEHICLES;

15 (D) A REPRESENTATIVE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINIS-
16 TRATION; AND

17 (E) A REPRESENTATIVE OF A NONGOVERNMENTAL ORGANIZATION WHOSE PRIMARY
18 PURPOSE OR ORGANIZING PRINCIPLE IS PROTECTION OF THE ENVIRONMENT.

19 (C) THE COMMITTEE ESTABLISHED IN PARAGRAPH (B) OF THIS SUBDIVISION
20 SHALL SEPARATELY ASSESS ALTERNATIVE BRAKE FRICTION MATERIAL FOR PASSEN-
21 GER VEHICLES, LIGHT-DUTY VEHICLES AND HEAVY-DUTY VEHICLES AND MAKE
22 RECOMMENDATIONS TO THE DEPARTMENT AS TO WHETHER ALTERNATIVE BRAKE FRIC-
23 TION MATERIAL IS AVAILABLE OR UNAVAILABLE FOR EACH.

24 (D) THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT THIS SUBDIVISION.

25 4. APPLICATION FOR EXEMPTIONS. ANY MOTOR VEHICLE MANUFACTURER OR BRAKE
26 FRICTION MATERIAL MANUFACTURER MAY APPLY TO THE DEPARTMENT FOR AN
27 EXEMPTION FROM THIS SECTION FOR BRAKE FRICTION MATERIAL INTENDED FOR A
28 SPECIFIC MOTOR VEHICLE MODEL OR CLASS OF MOTOR VEHICLES BASED ON SPECIAL
29 NEEDS OR CHARACTERISTICS OF THE MOTOR VEHICLES FOR WHICH THE BRAKE FRIC-
30 TION MATERIAL IS INTENDED. EXEMPTIONS MAY BE ISSUED FOR SMALL VOLUME
31 MOTOR VEHICLE MANUFACTURERS, SPECIFIC MOTOR VEHICLE MODELS, OR SPECIAL
32 CLASSES OF VEHICLES, INCLUDING, BUT NOT LIMITED TO, FIRE TRUCKS, POLICE
33 CARS, AND HEAVY OR WIDE LOAD EQUIPMENT HAULING; PROVIDED, HOWEVER, THAT
34 THE MANUFACTURER CAN DEMONSTRATE THAT COMPLYING WITH THE REQUIREMENTS OF
35 THIS SECTION DOES NOT ALLOW COMPLIANCE WITH SAFETY STANDARDS, OR CAUSES
36 SIGNIFICANT FINANCIAL HARDSHIP. EXEMPTIONS ARE VALID FOR NO LESS THAN
37 ONE YEAR AND MAY BE RENEWED AUTOMATICALLY AS NEEDED. EXEMPTIONS MAY ALSO
38 BE PERMANENT, PROVIDED THAT THEY ARE DESIGNATED AS SUCH AND PROVIDED
39 THAT THE VEHICLE IS USED SOLELY IN THE MANNER DESCRIBED IN THE APPLICA-
40 TION.

41 5. REPORTING REQUIREMENTS. (A) BY JANUARY FIRST, TWO THOUSAND TWELVE,
42 AND AT LEAST EVERY THREE YEARS THEREAFTER, MANUFACTURERS OF BRAKE FRIC-
43 TION MATERIAL SOLD OR OFFERED FOR SALE IN NEW YORK SHALL PROVIDE DATA TO
44 THE DEPARTMENT ADEQUATE TO ENABLE THE DEPARTMENT TO DETERMINE CONCEN-
45 TRATIONS OF ANTIMONY, COPPER, NICKEL AND ZINC AND THEIR COMPOUNDS IN
46 BRAKE FRICTION MATERIAL SOLD OR OFFERED FOR SALE IN NEW YORK.

47 (B) USING THIS DATA AND OTHER DATA AS NEEDED, AND IN CONSULTATION WITH
48 THE BRAKE FRICTION MATERIAL MANUFACTURING INDUSTRY, THE DEPARTMENT
49 SHALL:

50 (I) BY JULY FIRST, TWO THOUSAND TWELVE, ESTABLISH BASELINE CONCEN-
51 TRATION LEVELS FOR CONSTITUENTS IDENTIFIED IN BRAKE FRICTION MATERIAL;

52 (II) TRACK PROGRESS TOWARD REDUCING THE USE OF COPPER AND ITS
53 COMPOUNDS AND ENSURE THAT CONCENTRATION LEVELS OF ANTIMONY, COPPER,
54 NICKEL OR ZINC AND THEIR COMPOUNDS DO NOT INCREASE BY MORE THAN FIFTY
55 PERCENT ABOVE BASELINE CONCENTRATION LEVELS; AND

1 (III) IF CONCENTRATION LEVELS OF ANTIMONY, COPPER, NICKEL OR ZINC AND
2 THEIR COMPOUNDS IN BRAKE FRICTION MATERIAL INCREASE ABOVE BASELINE
3 CONCENTRATION LEVELS, THE DEPARTMENT SHALL REVIEW SCIENTIFIC STUDIES TO
4 DETERMINE THE POTENTIAL IMPACT OF THE CONSTITUENT ON HUMAN HEALTH AND
5 THE ENVIRONMENT. IF SCIENTIFIC STUDIES DEMONSTRATE THE NEED FOR CONTROL-
6 LING THE USE OF THE CONSTITUENT IN BRAKE FRICTION MATERIAL, THE DEPART-
7 MENT MAY RECOMMEND LIMITS ON CONCENTRATION LEVELS OF SUCH CONSTITUENT
8 MATERIAL.

9 6. COMPLIANCE. (A) MANUFACTURERS OF BRAKE FRICTION MATERIAL OFFERED
10 FOR SALE IN NEW YORK MUST CERTIFY COMPLIANCE WITH REQUIREMENTS OF THIS
11 SECTION AND MARK PROOF OF CERTIFICATION ON THE BRAKE FRICTION MATERIAL
12 IN ACCORDANCE WITH CRITERIA IMPLEMENTED PURSUANT TO THIS SUBDIVISION.

13 (B) BY DECEMBER FIRST, TWO THOUSAND ELEVEN, THE DEPARTMENT SHALL,
14 AFTER CONSULTING WITH INTERESTED PARTIES, DEVELOP COMPLIANCE CRITERIA TO
15 MEET THE REQUIREMENTS OF THIS SECTION. COMPLIANCE CRITERIA SHALL
16 INCLUDE, BUT NOT BE LIMITED TO, (I) SELF-CERTIFICATION OF COMPLIANCE BY
17 BRAKE FRICTION MATERIAL MANUFACTURERS AND (II) MARKED PROOF OF CERTIF-
18 ICATION, INCLUDING MANUFACTURE DATE, ON BRAKE FRICTION MATERIAL AND
19 PRODUCT PACKAGING. MARKED PROOF OF CERTIFICATION MUST APPEAR BY JANUARY
20 FIRST, TWO THOUSAND FOURTEEN.

21 (C) BEGINNING JANUARY FIRST, TWO THOUSAND TWENTY, MANUFACTURERS OF NEW
22 MOTOR VEHICLES OFFERED FOR SALE IN NEW YORK MUST ENSURE THAT MOTOR VEHI-
23 CLES ARE EQUIPPED WITH BRAKE FRICTION MATERIAL CERTIFIED TO BE COMPLIANT
24 WITH THE REQUIREMENTS OF THIS SECTION.

25 7. CIVIL PENALTY. (A) A BRAKE FRICTION MATERIAL MANUFACTURER THAT
26 KNOWINGLY VIOLATES THIS SECTION SHALL RECALL THE BRAKE FRICTION MATERIAL
27 AND REIMBURSE THE BRAKE FRICTION DISTRIBUTOR, RETAILER, OR ANY OTHER
28 PURCHASER FOR THE MATERIAL AND ANY APPLICABLE SHIPPING AND HANDLING
29 CHARGES FOR RETURNING THE MATERIAL. A BRAKE FRICTION MATERIAL MANUFAC-
30 Turer THAT VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT TO
31 EXCEED TEN THOUSAND DOLLARS FOR EACH VIOLATION.

32 (B) A MOTOR VEHICLE DISTRIBUTOR OR RETAILER THAT VIOLATES THIS SECTION
33 IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR
34 EACH VIOLATION. A MOTOR VEHICLE DISTRIBUTOR OR RETAILER IS NOT IN
35 VIOLATION OF THIS SECTION FOR SELLING A VEHICLE THAT WAS PREVIOUSLY SOLD
36 AT RETAIL AND THAT CONTAINS BRAKE FRICTION MATERIAL FAILING TO MEET THE
37 REQUIREMENTS OF THIS CHAPTER. HOWEVER, IF THE DEPARTMENT CONCLUSIVELY
38 PROVES THAT THE MOTOR VEHICLE DISTRIBUTOR OR RETAILER INSTALLED BRAKE
39 FRICTION MATERIAL THAT VIOLATES THIS SECTION ON THE VEHICLE BEING SOLD
40 AND WAS AWARE THAT THE BRAKE FRICTION MATERIAL VIOLATES THIS SECTION,
41 THE MOTOR VEHICLE DISTRIBUTOR OR RETAILER IS SUBJECT TO CIVIL PENALTIES
42 UNDER THIS SECTION.

43 (C) A MOTOR VEHICLE MANUFACTURER THAT VIOLATES THIS SECTION MUST NOTI-
44 FY THE REGISTERED OWNER OF THE VEHICLE WITHIN SIX MONTHS OF KNOWLEDGE OF
45 THE VIOLATION AND MUST REPLACE AT NO COST TO THE OWNER THE NONCOMPLIANT
46 BRAKE FRICTION MATERIAL WITH BRAKE FRICTION MATERIAL THAT COMPLIES WITH
47 THIS SECTION. A MOTOR VEHICLE MANUFACTURER THAT FAILS TO PROVIDE THE
48 REQUIRED NOTIFICATION TO REGISTERED OWNERS OF THE AFFECTED VEHICLES
49 WITHIN SIX MONTHS OF KNOWLEDGE OF THE VIOLATION IS SUBJECT TO A CIVIL
50 PENALTY NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS. A MOTOR VEHICLE
51 MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED NOTIFICATION TO REGIS-
52 TERED OWNERS OF THE AFFECTED VEHICLES AFTER TWELVE MONTHS OF KNOWLEDGE
53 OF THE VIOLATION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOU-
54 SAND DOLLARS PER VEHICLE.

55 8. EDUCATION. THE DEPARTMENT SHALL, BY JANUARY FIRST, TWO THOUSAND
56 ELEVEN, PREPARE AND DISTRIBUTE INFORMATION ABOUT THE PROHIBITIONS TO

1 MANUFACTURERS, DISTRIBUTORS, AND RETAILERS TO THE MAXIMUM EXTENT PRACTI-
2 CABLE.

3 9. RULES AND REGULATIONS. THE COMMISSIONER SHALL HAVE THE POWER TO
4 ENACT RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

5 S 3. This act shall take effect immediately.