S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 3, 2012

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:

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

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

S 382-D. BRAKE FRICTION MATERIAL. 1. DEFINITIONS. (A) "ALTERNATIVE BRAKE FRICTION MATERIAL" MEANS BRAKE MATERIAL THAT: (I) DOES NOT CONTAIN: (A) MORE THAN 0.5 PERCENT COPPER OR ITS COMPOUNDS BY WEIGHT; (B) THE CONSTITUENTS IDENTIFIED IN SUBDIVISION TWO OF THIS SECTION AT OR ABOVE THE CONCENTRATIONS SPECIFIED; OR (C) OTHER MATERIALS DETERMINED BY THE DEPARTMENT TO BE MORE HARMFUL TO HUMAN HEALTH OR THE ENVIRONMENT THAN EXISTING BRAKE FRICTION MATERIAL; (II) ENABLES MOTOR VEHICLE BRAKES TO MEET APPLICABLE FEDERAL SAFETY STANDARDS, OR IF NO FEDERAL SAFETY STANDARD EXISTS, A WIDELY ACCEPTED INDUSTRY STANDARD; (III) IS AVAILABLE AT A COST AND QUANTITY THAT DOES NOT CAUSE SIGNIFICANT FINANCIAL HARDSHIP ACROSS A MAJORITY OF BRAKE FRICTION MATERIAL AND VEHICLE MANUFACTURING INDUSTRIES; AND (IV) IS AVAILABLE TO ENABLE BRAKE FRICTION MATERIAL AND VEHICLE MANUFACTURERS TO PRODUCE VIABLE PRODUCTS MEETING 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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(B) "BRAKE FRICTION MATERIAL" MEANS THAT PART OF A MOTOR VEHICLE BRAKE DESIGNED TO SLOW OR STOP THE MOVEMENT OF A MOTOR VEHICLE THROUGH FRICTION MADE AGAINST A ROTOR OR MORE DURABLE MATERIAL.

(C) "MOTOR VEHICLE" MEANS A VEHICLE AS DEFINED BY SECTION ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER; PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SECTION SUCH TERM SHALL NOT INCLUDE A MOTORCYCLE AS DEFINED BY SECTION ONE HUNDRED TWENTY-THREE OF THIS CHAPTER.

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

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

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

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

(I) ASBESTIFORM FIBERS: 0.1 PERCENT BY WEIGHT;

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

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

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

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

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

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

(D) BRAKE FRICTION MATERIAL MANUFACTURED PRIOR TO TWO THOUSAND TWENTY-THREE IS EXEMPT FROM THE DEADLINE MANDATED BY PARAGRAPH (B) OF THIS SUBDIVISION FOR THE PURPOSES OF CLEARING INVENTORY; PROVIDED, HOWEVER, THAT SUCH EXEMPTION SHALL NOT EXTEND BEYOND JANUARY FIRST, TWO THOUSAND THIRTY-THREE.

(E) BRAKE FRICTION MATERIAL MANUFACTURED AS PART OF AN ORIGINAL EQUIPMENT SERVICE CONTRACT FOR VEHICLES MANUFACTURED PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, IS EXEMPT FROM THE DEADLINE MANDATED IN PARAGRAPH (A) OF THIS SUBDIVISION.

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

3. DEPARTMENT REVIEW OF ALTERNATIVE BRAKE FRICTION MATERIAL. (A) ON OR BEFORE DECEMBER FIRST, TWO THOUSAND SEVENTEEN, THE DEPARTMENT SHALL REVIEW RISK ASSESSMENTS, SCIENTIFIC STUDIES, AND OTHER RELEVANT ANALYSES REGARDING BRAKE FRICTION MATERIAL AND DETERMINE WHETHER THE MATERIAL MAY

BE AVAILABLE. THE DEPARTMENT SHALL CONSIDER ANY NEW SCIENCE WITH REGARD TO THE BIOAVAILABILITY AND TOXICITY OF COPPER.

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

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

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

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

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

(C) A REPRESENTATIVE OF MANUFACTURERS OF MOTOR VEHICLES;

(D) A REPRESENTATIVE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; AND

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

(C) THE COMMITTEE ESTABLISHED IN PARAGRAPH (B) OF THIS SUBDIVISION SHALL SEPARATELY ASSESS ALTERNATIVE BRAKE FRICTION MATERIAL FOR PASSENGER VEHICLES, LIGHT-DUTY VEHICLES AND HEAVY-DUTY VEHICLES AND MAKE RECOMMENDATIONS TO THE DEPARTMENT AS TO WHETHER ALTERNATIVE BRAKE FRICTION MATERIAL IS AVAILABLE OR UNAVAILABLE FOR EACH.

(D) BEGINNING EIGHT YEARS AFTER THE COMMITTEE ESTABLISHED IN PARAGRAPH (B) OF THIS SUBDIVISION CONFIRMS THAT ALTERNATIVE BRAKE FRICTION MATERIAL IS AVAILABLE SUBSEQUENT TO THE PUBLICATION IN THE NEW YORK STATE REGISTER OF THE REPORT REFERENCED IN SUBPARAGRAPH (I) OF PARAGRAPH (B) OF THIS SUBDIVISION NO MANUFACTURER, WHOLESALER, RETAILER, OR DISTRIBUTOR MAY SELL OR OFFER FOR SALE BRAKE FRICTION MATERIAL IN NEW YORK STATE CONTAINING MORE THAN 0.5 PERCENT COPPER AND ITS COMPOUNDS BY WEIGHT, AS SPECIFIED IN THE REPORT.

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

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

5. REPORTING REQUIREMENTS. (A) BY JANUARY FIRST, TWO THOUSAND FIFTEEN, AND AT LEAST EVERY THREE YEARS THEREAFTER, MANUFACTURERS OF BRAKE FRICTION MATERIAL SOLD OR OFFERED FOR SALE IN NEW YORK SHALL PROVIDE DATA TO THE DEPARTMENT ADEQUATE TO ENABLE THE DEPARTMENT TO DETERMINE CONCENTRATIONS OF ANTIMONY, COPPER, NICKEL AND ZINC AND THEIR COMPOUNDS IN BRAKE FRICTION MATERIAL SOLD OR OFFERED FOR SALE IN NEW YORK.

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

(I) BY JULY FIRST, TWO THOUSAND FIFTEEN, ESTABLISH BASELINE CONCENTRATION LEVELS FOR CONSTITUENTS IDENTIFIED IN BRAKE FRICTION MATERIAL;

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

(III) IF CONCENTRATION LEVELS OF ANTIMONY, COPPER, NICKEL OR ZINC AND THEIR COMPOUNDS IN BRAKE FRICTION MATERIAL INCREASE ABOVE BASELINE CONCENTRATION LEVELS, THE DEPARTMENT SHALL REVIEW SCIENTIFIC STUDIES TO DETERMINE THE POTENTIAL IMPACT OF THE CONSTITUENT ON HUMAN HEALTH AND THE ENVIRONMENT. IF SCIENTIFIC STUDIES DEMONSTRATE THE NEED FOR CONTROLLING THE USE OF THE CONSTITUENT IN BRAKE FRICTION MATERIAL, THE DEPARTMENT MAY RECOMMEND LIMITS ON CONCENTRATION LEVELS OF SUCH CONSTITUENT MATERIAL.

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

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

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

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

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

(C) A MOTOR VEHICLE MANUFACTURER THAT VIOLATES THIS SECTION MUST NOTIFY THE REGISTERED OWNER OF THE VEHICLE WITHIN SIX MONTHS OF KNOWLEDGE OF THE VIOLATION AND MUST REPLACE AT NO COST TO THE OWNER THE NONCOMPLIANT BRAKE FRICTION MATERIAL WITH BRAKE FRICTION MATERIAL THAT COMPLIES WITH THIS SECTION. A MOTOR VEHICLE MANUFACTURER THAT FAILS TO PROVIDE THE

REQUIRED NOTIFICATION TO REGISTERED OWNERS OF THE AFFECTED VEHICLES WITHIN SIX MONTHS OF KNOWLEDGE OF THE VIOLATION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS. A MOTOR VEHICLE MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED NOTIFICATION TO REGISTERED OWNERS OF THE AFFECTED VEHICLES AFTER TWELVE MONTHS OF KNOWLEDGE OF THE VIOLATION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS PER VEHICLE.

8. EDUCATION. THE DEPARTMENT SHALL, BY JANUARY FIRST, TWO THOUSAND THIRTEEN, PREPARE AND DISTRIBUTE INFORMATION ABOUT THE PROHIBITIONS TO MANUFACTURERS, DISTRIBUTORS, AND RETAILERS TO THE MAXIMUM EXTENT PRACTICABLE.

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

S 3. This act shall take effect immediately.