

1356--B

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. DILAN, DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 THAN EXISTING BRAKE FRICTION MATERIAL; (II) ENABLES MOTOR VEHICLE BRAKES
2 TO MEET APPLICABLE FEDERAL SAFETY STANDARDS, OR IF NO FEDERAL SAFETY
3 STANDARD EXISTS, A WIDELY ACCEPTED INDUSTRY STANDARD; (III) IS AVAILABLE
4 AT A COST AND QUANTITY THAT DOES NOT CAUSE SIGNIFICANT FINANCIAL HARD-
5 SHIP ACROSS A MAJORITY OF BRAKE FRICTION MATERIAL AND VEHICLE MANUFAC-
6 TURING INDUSTRIES; AND (IV) IS AVAILABLE TO ENABLE BRAKE FRICTION MATE-
7 RIAL AND VEHICLE MANUFACTURERS TO PRODUCE VIABLE PRODUCTS MEETING
8 CONSUMER EXPECTATIONS REGARDING BRAKE NOISE, SHUDDERING AND DURABILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (E) BRAKE FRICTION MATERIAL MANUFACTURED AS PART OF AN ORIGINAL EQUIP-
53 MENT SERVICE CONTRACT FOR VEHICLES MANUFACTURED PRIOR TO JANUARY FIRST,
54 TWO THOUSAND SEVENTEEN, IS EXEMPT FROM THE DEADLINE MANDATED IN PARA-
55 GRAPH (A) OF THIS SUBDIVISION.

1 (F) BRAKE FRICTION MATERIAL MANUFACTURED AS PART OF AN ORIGINAL EQUIP-
2 MENT SERVICE CONTRACT FOR VEHICLES MANUFACTURED PRIOR TO JANUARY FIRST,
3 TWO THOUSAND TWENTY-THREE, IS EXEMPT FROM THE DEADLINE MANDATED IN PARA-
4 GRAPH (B) OF THIS SUBDIVISION.

5 3. DEPARTMENT REVIEW OF ALTERNATIVE BRAKE FRICTION MATERIAL. (A) ON OR
6 BEFORE DECEMBER FIRST, TWO THOUSAND SEVENTEEN, THE DEPARTMENT SHALL
7 REVIEW RISK ASSESSMENTS, SCIENTIFIC STUDIES, AND OTHER RELEVANT ANALYSES
8 REGARDING BRAKE FRICTION MATERIAL AND DETERMINE WHETHER THE MATERIAL MAY
9 BE AVAILABLE. THE DEPARTMENT SHALL CONSIDER ANY NEW SCIENCE WITH REGARD
10 TO THE BIOAVAILABILITY AND TOXICITY OF COPPER.

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

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

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

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

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

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

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

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

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

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

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

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

1 THAT THE VEHICLE IS USED SOLELY IN THE MANNER DESCRIBED IN THE APPLICA-
2 TION.

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

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

12 (I) BY JULY FIRST, TWO THOUSAND FIFTEEN, ESTABLISH BASELINE CONCEN-
13 TRATION LEVELS FOR CONSTITUENTS IDENTIFIED IN BRAKE FRICTION MATERIAL;

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

18 (III) IF CONCENTRATION LEVELS OF ANTIMONY, COPPER, NICKEL OR ZINC AND
19 THEIR COMPOUNDS IN BRAKE FRICTION MATERIAL INCREASE ABOVE BASELINE
20 CONCENTRATION LEVELS, THE DEPARTMENT SHALL REVIEW SCIENTIFIC STUDIES TO
21 DETERMINE THE POTENTIAL IMPACT OF THE CONSTITUENT ON HUMAN HEALTH AND
22 THE ENVIRONMENT. IF SCIENTIFIC STUDIES DEMONSTRATE THE NEED FOR CONTROL-
23 LING THE USE OF THE CONSTITUENT IN BRAKE FRICTION MATERIAL, THE DEPART-
24 MENT MAY RECOMMEND LIMITS ON CONCENTRATION LEVELS OF SUCH CONSTITUENT
25 MATERIAL.

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

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

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

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

49 (B) A MOTOR VEHICLE DISTRIBUTOR OR RETAILER THAT KNOWINGLY VIOLATES
50 THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND
51 DOLLARS FOR EACH VIOLATION. A MOTOR VEHICLE DISTRIBUTOR OR RETAILER IS
52 NOT IN VIOLATION OF THIS SECTION FOR SELLING A VEHICLE THAT WAS PREVI-
53 OUSLY SOLD AT RETAIL AND THAT CONTAINS BRAKE FRICTION MATERIAL FAILING
54 TO MEET THE REQUIREMENTS OF THIS CHAPTER. HOWEVER, IF THE DEPARTMENT
55 CONCLUSIVELY PROVES THAT THE MOTOR VEHICLE DISTRIBUTOR OR RETAILER
56 INSTALLED BRAKE FRICTION MATERIAL THAT VIOLATES THIS SECTION ON THE

1 VEHICLE BEING SOLD AND WAS AWARE THAT THE BRAKE FRICTION MATERIAL
2 VIOLATES THIS SECTION, THE MOTOR VEHICLE DISTRIBUTOR OR RETAILER IS
3 SUBJECT TO CIVIL PENALTIES UNDER THIS SECTION.

4 (C) A MOTOR VEHICLE MANUFACTURER THAT VIOLATES THIS SECTION MUST NOTI-
5 FY THE REGISTERED OWNER OF THE VEHICLE WITHIN SIX MONTHS OF KNOWLEDGE OF
6 THE VIOLATION AND MUST REPLACE AT NO COST TO THE OWNER THE NONCOMPLIANT
7 BRAKE FRICTION MATERIAL WITH BRAKE FRICTION MATERIAL THAT COMPLIES WITH
8 THIS SECTION. A MOTOR VEHICLE MANUFACTURER THAT FAILS TO PROVIDE THE
9 REQUIRED NOTIFICATION TO REGISTERED OWNERS OF THE AFFECTED VEHICLES
10 WITHIN SIX MONTHS OF KNOWLEDGE OF THE VIOLATION IS SUBJECT TO A CIVIL
11 PENALTY NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS. A MOTOR VEHICLE
12 MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED NOTIFICATION TO REGIS-
13 TERED OWNERS OF THE AFFECTED VEHICLES AFTER TWELVE MONTHS OF KNOWLEDGE
14 OF THE VIOLATION IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOU-
15 SAND DOLLARS PER VEHICLE.

16 8. EDUCATION. THE DEPARTMENT SHALL, BY JANUARY FIRST, TWO THOUSAND
17 THIRTEEN, PREPARE AND DISTRIBUTE INFORMATION ABOUT THE PROHIBITIONS TO
18 MANUFACTURERS, DISTRIBUTORS, AND RETAILERS TO THE MAXIMUM EXTENT PRACTI-
19 CABLE.

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

22 S 3. This act shall take effect immediately.