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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO MOTOR AND OTHER VEHICLES - BRAKE FRICTION MATERIAL

Introduced By: Representatives A Rice, Walsh, Handy, Segal, and Ucci

Date Introduced: April 08, 2010

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 31 of the General Laws entitled "MOTOR AND OTHER  
2 VEHICLES" is hereby amended by adding thereto the following chapter:

3 CHAPTER 5.6

4 BRAKE FRICTION MATERIAL

5 **31-5.6-1. Findings. --** The general assembly finds that:

6 (1) Brake friction material is an essential component of motor vehicle brakes and is  
7 critically important to transportation safety and public safety in general;

8 (2) Debris from brake friction material containing copper and its compounds is generated  
9 and released to the environment during normal operation of motor vehicle brakes;

10 (3) Thousands of pounds of copper and other substances released from brake friction  
11 material enter Rhode Island streams, rivers, and marine environment every year; and

12 (4) Copper is toxic to many aquatic organisms, including salmon.

13 **31-5.6-2. Definitions. --** For the purposes of this chapter the following terms have the  
14 following meanings:

15 (1) "Accredited laboratory" means a laboratory that is:

16 (i) Qualified and equipped for testing of products, materials, equipment, and installations  
17 in accordance with national or international standards; and

18 (ii) Accredited by a third-party organization approved by the department to accredit  
19 laboratories for purposes of this chapter.

1           (2) "Alternative brake friction material" means brake friction material that:  
2           (i) Does not contain:  
3           (A) More than five tenths (.5%) percent copper or its compounds by weight;  
4           (B) The constituents identified in section 31-5.6-3 at or above the concentrations  
5 specified; and  
6           (C) Other materials determined by the department to be more harmful to human health or  
7 the environment than existing brake friction material;  
8           (ii) Enables motor vehicle brakes to meet applicable federal safety standards, or if no  
9 federal safety standard exists, a widely accepted industry standard;  
10           (iii) Is available at a cost and quantity that does not cause significant financial hardship  
11 across the majority of brake friction material and vehicle manufacturing industries; and  
12           (iv) Is available to enable brake friction material and vehicle manufacturers to produce  
13 viable products meeting consumer expectations regarding braking noise, shuddering, and  
14 durability.  
15           (3) "Brake friction material" means that part of a motor vehicle brake designed to retard  
16 or stop the movement of a motor vehicle through friction against a rotor made of more durable  
17 material.  
18           (4) "Committee" means the brake friction material advisory committee.  
19           (5) "Department" means the department of motor vehicles.  
20           (6) "Motor vehicle" shall have the same meaning as defined in subsection 31-1-3(p), but  
21 shall not include:  
22           (i) Motorcycle as defined in subsection 31-1-3(j);  
23           (ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or  
24 similar brake systems that are fully contained and emit no debris or fluid under normal operating  
25 conditions;  
26           (iii) Military combat vehicles;  
27           (iv) Race cars, dual-sport vehicles, or tack day vehicles, whose primary use is for off-  
28 road purposes.  
29           (v) Antique vehicles, as defined in subdivision 31-1-3(a)(1).  
30           (7) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop  
31 the movement of a motor vehicle. "Motor vehicle brake" does not include brakes designed  
32 primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.  
33           (8) "Original equipment service" means brake friction material provided as service parts  
34 originally designed for and using the same brake, friction material formulation sold with a new

1 motor vehicle.

2 (9) "Small volume motor vehicle manufacturer" means a manufacturer of motor vehicles  
3 with annual sales in Rhode Island of less than one thousand (1,000) new passenger cars, light-  
4 duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines based on the  
5 average number of vehicles sold for the three (3) previous consecutive model years.

6 **31-5.6-3. Restrictions on sale of certain brake friction material.** -- (a) Beginning  
7 January 1, 2014, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale  
8 brake friction material in Rhode Island containing any of the following constituents in an amount  
9 exceeding the specified concentrations:

10 (1) Asbestiform fibers, one tenth percent (.1%) by weight.

11 (2) Cadmium and its compounds, one hundredths percent (.01%) by weight.

12 (3) Chromium (VI)-salts, one tenth percent (.1%) by weight.

13 (4) Lead and its compounds, one tenth percent (.1%) by weight.

14 (5) Mercury and its compounds, one tenth percent (.1%) by weight.

15 (b) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may  
16 sell or offer for sale brake friction material in Rhode Island containing more than five percent  
17 (5%) copper and its compounds by weight.

18 (c) Brake friction material manufactured prior to 2015 is exempt from subsection (a) for  
19 the purposes of clearing inventory. This exemption expires January 1, 2025.

20 (d) Brake friction material manufacturer prior to 2021 is exempt from subsection (b) for  
21 the purposes of clearing inventory. This exemption expires January 1, 2031.

22 (e) Brake friction material manufactured as part of an original equipment service contract  
23 for vehicles manufactured prior to January 1, 2015, is exempt from subsection (a).

24 (f) Brake friction material manufactured as part of an original equipment service contract  
25 for vehicles manufactured prior to January 1, 2021, is exempt from subsection (b).

26 **31-5.6-4. Review by advisory committee.** -- (a) By December 1, 2015, the department  
27 shall review risk assessments, scientific studies, and other relevant analyses regarding alternative  
28 brake friction material and determine whether the material may be available. The department  
29 shall consider any new science with regard to the bioavailability and toxicity of copper.

30 (b) If the department finds that alternative brake friction material may be available, it  
31 shall convene a brake friction material advisory committee. The committee shall include, but is  
32 not limited to:

33 (1) A representative of the department, who will chair the committee;

34 (2) The head of the Rhode Island state police, or his or her designee;

- 1           (3) A representative of manufactures of brake friction material;  
2           (4) A representative of manufacturers of motor vehicles;  
3           (5) A representative of a nongovernmental organization concerned with motor vehicle  
4 safety;  
5           (6) A representative of the national highway traffic safety administration; and  
6           (7) A representative of a nongovernmental organization concerned with the environment.  
7           (c) If convened, the committee shall separately assess alternative brake friction material  
8 for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. The committee shall make  
9 different recommendations to the department as to whether alternative brake friction material is  
10 available or unavailable for passenger vehicles, light-duty vehicles, and heavy-duty vehicles. For  
11 purposes of this section, "heavy-duty vehicle" means a vehicle used for commercial purposes as  
12 defined in section 31-1-9. The committee shall also consider appropriate exemptions including  
13 original equipment service and brake friction material manufactured prior to the dates specified in  
14 section 31-5.6-5. The department shall consider the committee's recommendations and make a  
15 finding as to whether alternative brake friction material is available or unavailable.  
16           (d) If the department finds that alternative brake friction material:  
17           (1) Is available, it shall comply with section 31-5.6-5;  
18           (2) Is not available, it shall periodically evaluate the finding and, if it determines that  
19 alternative brake friction material may be available, comply with subsections (b) and (c). If the  
20 department finds that alternative brake friction material is available, it shall comply with section  
21 31-5.6-5.  
22           **31-5.6-5. Alternative brake friction availability. --** If, pursuant to section 31-5.6-4, the  
23 department finds that alternative brake friction material is available:  
24           (1) (i) By December 31<sup>st</sup> of the year in which the finding is made, the department shall  
25 present the information required by section 31-5.6-4 in a report to the appropriate committees of  
26 the general assembly.  
27           (ii) The report must include recommendations for exemptions on original equipment  
28 service and brake friction material manufactured prior to dates specified in this section and may  
29 include recommendations for other exemptions.  
30           (2) Beginning eight (8) years after the report is presented to the general assembly no  
31 manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material  
32 in Rhode Island containing more than five tenths percent (.5%) of copper and its compounds by  
33 weight, as specified in the report.  
34           (3) The department shall adopt rules to implement this section.

1           **31-5.6-6. Exemptions.** -- Any motor vehicle manufacturer or brake friction material  
2 manufacturer may apply to the department for an exemption from this chapter for brake friction  
3 material intended for a specific motor vehicle model or class of motor vehicles based on special  
4 needs to characteristics of the motor vehicles for which the brake friction material is intended.  
5 Exemptions may only be issued for small volume motor vehicle manufacturer's specific motor  
6 vehicle models, or special classes of vehicles, such as fire trucks, police cars, and heavy or wide-  
7 load equipment hauling, provided the manufacturer can demonstrate that complying with the  
8 requirements of this chapter is nor feasible, does not allow compliance with safety standards, or  
9 causes significant financial hardship. Exemptions are valid for no less than one year and may be  
10 renewed automatically as needed or the exemption may be permanent for as long as the vehicle is  
11 used in the manner described in the application.

12           **31-5.6-7. Manufacturer's report.** -- (a) By January 1, 2013, and at least every three (3)  
13 years thereafter, manufacturers of brake friction material sold or offered for sale in Rhode Island  
14 shall provide data to the department adequate to enable the department to determine  
15 concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction  
16 material sold or offered for sale in Rhode Island.

17           (b) Using data provided pursuant to subsection (a) and other data as needed, and in  
18 consultation with the brake friction material manufacturing industry, the department must:

19           (1) By July 1, 2013, establish baseline concentration levels for constituents identified in  
20 subsection (a) in brake friction material; and

21           (2) Track progress toward reducing the use of copper and its compounds and ensure that  
22 concentration levels of antimony, nickel, or zinc and their compounds do not increase by more  
23 than fifty percent (50%) above baseline concentration levels.

24           (3) If concentration levels of antimony, nickel, or zinc and their compounds in brake  
25 friction material increase by more than fifty percent (50%) above baseline concentration levels,  
26 the department shall review scientific studies to determine the potential impact of the constituent  
27 on human health and the environment. If scientific studies demonstrate the need for controlling  
28 the use of the constituent in brake friction material, the department may consider recommending  
29 limits on concentration levels of the constituent in the material.

30           (c) Confidential business information is exempt from public disclosure.

31           **31-5.6-8. Compliance criteria.** -- (a) Manufacturers of brake friction material offered for  
32 sale in Rhode Island must certify compliance with the requirements of this chapter and mark  
33 proof of certification on the brake friction material in accordance with criteria developed under  
34 this section.

1           (b) By December 1, 2012, the department must, after consulting with interested parties,  
2 develop compliance criteria to meet the requirements of this chapter. Compliance criteria  
3 includes, but is not limited to:

4           (1) Self-certification of compliance by brake friction material manufacturers using  
5 accredited laboratories; and

6           (2) Marked proof of certification, including manufacture date, on brake friction material  
7 and product packaging. Marked proof of certification must appear by January 1, 2015. Brake  
8 friction materials manufactured or packaged prior to January 1, 2015, are exempt from this  
9 subsection.

10          (c) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in  
11 Rhode Island must ensure that motor vehicles are equipped with brake friction material certified  
12 to be compliant with the requirements of this chapter.

13          **31-5.6-9. Enforcement.** -- (a) The department shall enforce this chapter. The department  
14 may periodically purchase and test brake friction material sold or offered for sale in Rhode Island  
15 to verify that the material complies with this chapter.

16          (b) Enforcement of this chapter by the department must rely on notification and  
17 information exchange between the department and manufacturers, distributors, and retailers. The  
18 department shall issue one warning letter by certified mail to a manufacturer, distributor, or  
19 retailer that sells or offers to sell brake friction materials in violation of this chapter, and offer  
20 information or other appropriate assistance regarding compliance with this chapter. Once a  
21 warning letter has been issued to a distributor or retailer for violations of this subsection, the  
22 department need not provide warning letters for subsequent violations by that distributor or  
23 retailer. For the purposes of this section, a warning letter serves as notice of the violation. If  
24 compliance is not achieved, the department may assess penalties under this subsection.

25          (c) A brake friction material distributor or retailer that violates this chapter is subject to a  
26 civil penalty not to exceed ten thousand dollars (\$10,000) for each violation. Brake friction  
27 material distributors or retailers that sell brake friction material that is packaged consistent with  
28 subdivision 31-5.6-8(b)(2) are not in violation of this chapter. However, if the department  
29 conclusively proves that the brake friction material distributor or retailer was aware that the brake  
30 friction material being sold violates sections 31-5.6-3 or 31-5.6-5, the brake friction material  
31 distributor or retailer is subject to civil penalties according to this section.

32          (d) A brake friction material manufacturer that knowingly violates this chapter shall  
33 recall the brake friction material and reimburse the brake friction distributor, retailer, or any other  
34 purchaser for the material and any applicable shipping and handling charges for returning the

1 material. A brake friction material manufacturer that violates this chapter is subject to a civil  
2 penalty not to exceed ten thousand dollars (\$10,000) for each violation.

3 (e) A motor vehicle distributor or retailer that violates this chapter is subject to a civil  
4 penalty not to exceed ten thousand dollars (\$10,000) for each violation. A motor vehicle  
5 distributor or retailer is not in violation of this chapter for selling a vehicle that was previously  
6 sold at retail and that contains brake friction material failing to meet the requirements of this  
7 chapter. However, if the department conclusively proves that the motor vehicle distributor or  
8 retailer knowingly installed brake friction material that violates sections 31-5.6-3, 31-5.6-5 or 31-  
9 5.6-8(b)(2) on the vehicle being sold the motor vehicle distributor or retailer is subject to civil  
10 penalties under this section.

11 (f) A motor vehicle manufacturer that violates this chapter must notify the registered  
12 owner of the vehicle within six (6) months of knowledge of the violation and must replace, at no  
13 cost to the owner, the noncompliant brake friction materials with brake friction material that  
14 complies with this chapter. A motor vehicle manufacturer that fails to provide the required  
15 notification to registered owners of the affected vehicles within six (6) months of knowledge of  
16 the violation is subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000).  
17 A motor vehicle manufacturer that fails to provide the required notification to registered owners  
18 of the affected vehicles after twelve (12) months of knowledge of the violation is subject to a civil  
19 penalty not to exceed ten thousand dollars (\$10,000) per vehicle. For purposes of this section,  
20 “motor vehicle manufacturer” does not include a vehicle dealer defined under this section.

21 (g) Before the effective date of the prohibitions in sections 31-5.6-3 or 31-5.6-5, the  
22 department shall prepare and distribute information about the prohibitions to manufacturers,  
23 distributors, and retailers to the maximum extent practicable.

24 (h) All penalties collected under this chapter must be deposited in the general fund.

25 **31-5.6-10. Rules and regulations.** -- The department may adopt rules and regulations  
26 necessary to implement this chapter.

27 **31-5.6-11. Validity.** -- If any provision of this act or its application to any person or  
28 circumstances is held invalid, the remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

30 SECTION 2. This act shall take effect upon passage.

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO MOTOR AND OTHER VEHICLES - BRAKE FRICTION MATERIAL

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1           This act would provide for the use of motor vehicle brake friction material which does  
2 not contain copper or its compounds.

3           This act would take effect upon passage.

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