AN ACT Relating to limiting the use of certain substances in brake friction material; adding a new chapter to Title 70 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that:
(1) Brake friction material is an essential component of motor vehicle brakes and is critically important to transportation safety and public safety in general;
(2) Debris from brake friction material containing copper and its compounds is generated and released to the environment during normal operation of motor vehicle brakes;
(3) Thousands of pounds of copper and other substances released from brake friction material enter Washington state's streams, rivers, and marine environment every year; and
(4) Copper is toxic to many aquatic organisms in both marine and freshwater environments and impairs the sensory systems of salmon, hindering their ability to elude predators and return to spawning streams.
NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accredited laboratory" means a laboratory that is:
   (a) Qualified and equipped for testing of products, materials, equipment, and installations in accordance with national or international standards; and
   (b) Accredited by a third-party organization approved by the department to accredit laboratories for purposes of this chapter.

(2) "Alternative brake friction material" means brake friction material that:
   (a) Does not contain:
     (i) More than 0.5 percent copper or its compounds by weight;
     (ii) The constituents identified in section 3 of this act at the concentrations specified; and
     (iii) Any other material determined by the department to be harmful to human health or the environment;
   (b) Enables motor vehicle brakes to meet safety standards;
   (c) Is available at a cost and quantity that does not cause significant financial hardship across the brake friction material manufacturing industry; and
   (d) Is available to enable brake friction material manufacturers to produce viable products meeting consumer expectations regarding braking noise, shuddering, and durability.

(3) "Brake friction material" means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of more durable material.

(4) "Committee" means the brake friction material advisory committee.

(5) "Department" means the department of ecology.

(6)(a) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 that are subject to licensing requirements under RCW 46.16.010.

   (b) "Motor vehicle" does not include:
     (i) Motorcycles as defined in RCW 46.04.330;
     (ii) Motor vehicles employing internal closed oil immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions; or
     (iii) Military combat vehicles.
(7)(a) "Motor vehicle brake" means an energy conversion mechanism used to retard or stop the movement of a motor vehicle.

(b) "Motor vehicle brake" does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(8) "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.

NEW SECTION. Sec. 3. (1) Beginning January 1, 2014, brake friction material containing any of the following constituents in an amount exceeding the specified concentrations may not be sold or offered for sale in Washington state:

(a) Asbestiform fibers, 0.1 percent by weight.
(b) Cadmium and its compounds, 0.01 percent by weight.
(c) Chromium(VI)-salts, 0.1 percent by weight.
(d) Lead and its compounds, 0.1 percent by weight.
(e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, brake friction material containing more than five percent copper and its compounds by weight may not be sold or offered for sale in Washington state.

(3) Brake friction material bearing a marking proof of certification, as required in section 8 of this act, indicating that the brake friction material was manufactured prior to 2021 is exempt from subsection (2) of this section. This exemption expires January 1, 2031.

NEW SECTION. Sec. 4. (1) By December 1, 2015, the department shall review risk assessments, scientific studies, and other relevant analysis regarding alternative brake friction material and determine whether the material may be available.

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

(a) A representative of the department, who will chair the committee;
(b) The chief of the Washington state patrol, or the chief's
designee;
(c) A representative of manufacturers of brake friction material;
(d) A representative of manufacturers of motor vehicles;
(e) A representative of a nongovernmental organization concerned
with motor vehicle safety;
(f) A representative of the national highway traffic safety
administration; and
(g) A representative of a nongovernmental organization concerned
with the environment.
(3) If convened pursuant to subsection (2) of this section, the
committee shall assess alternative brake friction material and make a
recommendation to the department as to whether the material is
available or unavailable. The department shall consider the
committee's recommendation and make a finding as to whether alternative
brake friction material is available or unavailable.
(4) If, pursuant to subsection (3) of this section, the department
finds that alternative brake friction material:
(a) Is available, it shall comply with section 5 of this act;
(b) Is not available, it shall periodically evaluate the finding
and, if it determines that alternative brake friction material may be
available, comply with subsections (2) and (3) of this section. If the
department finds that alternative brake friction material is available,
it shall comply with section 5 of this act.

NEW SECTION. Sec. 5. If, pursuant to section 4 of this act, the
department finds that alternative brake friction material is available:
(1) It shall report the finding to the legislature by December 1st
of the year in which it makes the finding; and
(2) Beginning five years after the report submittal date, but no
earlier than January 1, 2025, brake friction material containing more
than 0.5 percent copper and its compounds by weight may not be sold or
offered for sale in Washington state.

NEW SECTION. Sec. 6. (1) Any manufacturer of brake friction
material may apply to the department for an exemption from this chapter
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.

(2) Brake friction material manufactured as part of an original
equipment service contract for vehicles manufactured prior to January
1, 2021, is exempt from this chapter. This exemption expires January
1, 2031.

NEW SECTION. Sec. 7. (1) By January 1, 2013, and at least every
three years thereafter, manufacturers of brake friction material sold
or offered for sale in Washington state 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
Washington state.

(2) Using data provided pursuant to subsection (1) of this section
and other data as needed, the department must:

(a) By July 1, 2012, establish baseline concentration levels for
constituents identified in subsection (1) of this section in brake
friction material; and

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

(3) If concentration levels of antimony, nickel, or zinc and their
compounds in brake friction material increase by more than fifty
percent 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 consider recommending
limits on concentration levels of the constituent in the material.

NEW SECTION. Sec. 8. (1) Manufacturers of brake friction material
offered for sale in Washington state must certify compliance with the
requirements of this chapter and mark proof of certification on the
brake friction material in accordance with criteria developed under
this section.
(2) By December 1, 2012, the department must, after consulting with interested parties, develop compliance criteria to meet the requirements of this chapter. Compliance criteria includes, but is not limited to:

(a) Self-certification of compliance by brake friction materials manufacturers using accredited laboratories; and

(b) Marking proof of certification on brake friction material.

(3) Beginning January 1, 2021, manufacturers of new motor vehicles offered for sale in Washington state must ensure that motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter.

NEW SECTION. Sec. 9. (1) The department shall enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department shall issue one warning letter to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. If compliance is not achieved, the department may assess penalties under subsection (3) of this section.

(3) A manufacturer, distributor, or retailer of brake friction material that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Collected penalties must be deposited in the state toxics control account created in RCW 70.105D.070.

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

NEW SECTION. Sec. 10. Sections 1 through 9 of this act constitute a new chapter in Title 70 RCW.
NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---