

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6557

61st Legislature
2010 Regular Session

Passed by the Senate March 8, 2010
YEAS 40 NAYS 6

President of the Senate

Passed by the House March 4, 2010
YEAS 86 NAYS 12

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6557** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6557

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Ranker, Swecker, Rockefeller, Brandland, Brown, Kohl-Welles, Shin, Fraser, and Kline; by request of Department of Ecology and Puget Sound Partnership)

READ FIRST TIME 02/04/10.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

12 (3) Thousands of pounds of copper and other substances released
13 from brake friction material enter Washington state's streams, rivers,
14 and marine environment every year; and

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

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

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

1 (a) Qualified and equipped for testing of products, materials,
2 equipment, and installations in accordance with national or
3 international standards; and

4 (b) Accredited by a third-party organization approved by the
5 department to accredit laboratories for purposes of this chapter.

6 (2) "Alternative brake friction material" means brake friction
7 material that:

8 (a) Does not contain:

9 (i) More than 0.5 percent copper or its compounds by weight;

10 (ii) The constituents identified in section 3 of this act at or
11 above the concentrations specified; and

12 (iii) Other materials determined by the department to be more
13 harmful to human health or the environment than existing brake friction
14 material;

15 (b) Enables motor vehicle brakes to meet applicable federal safety
16 standards, or if no federal safety standard exists, a widely accepted
17 industry standard;

18 (c) Is available at a cost and quantity that does not cause
19 significant financial hardship across the majority of brake friction
20 material and vehicle manufacturing industries; and

21 (d) Is available to enable brake friction material and vehicle
22 manufacturers to produce viable products meeting consumer expectations
23 regarding braking noise, shuddering, and durability.

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

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

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

30 (6)(a) "Motor vehicle" has the same meaning as defined in RCW
31 46.04.320 that are subject to licensing requirements under RCW
32 46.16.010.

33 (b) "Motor vehicle" does not include:

34 (i) Motorcycles as defined in RCW 46.04.330;

35 (ii) Motor vehicles employing internal closed oil immersed motor
36 vehicle brakes or similar brake systems that are fully contained and
37 emit no debris or fluid under normal operating conditions;

38 (iii) Military combat vehicles;

1 (iv) Race cars, dual-sport vehicles, or track day vehicles, whose
2 primary use is for off-road purposes and are permitted under RCW
3 46.16.160; or

4 (v) Collector vehicles, as defined in RCW 46.04.126.

5 (7)(a) "Motor vehicle brake" means an energy conversion mechanism
6 used to retard or stop the movement of a motor vehicle.

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

10 (8) "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 (9) "Small volume motor vehicle manufacturer" means a manufacturer
14 of motor vehicles with Washington annual sales of less than one
15 thousand new passenger cars, light-duty trucks, medium-duty vehicles,
16 heavy-duty vehicles, and heavy-duty engines based on the average number
17 of vehicles sold for the three previous consecutive model years.

18 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2014, no
19 manufacturer, wholesaler, retailer, or distributor may sell or offer
20 for sale brake friction material in Washington state containing any of
21 the following constituents in an amount exceeding the specified
22 concentrations:

23 (a) Asbestiform fibers, 0.1 percent by weight.

24 (b) Cadmium and its compounds, 0.01 percent by weight.

25 (c) Chromium(VI)-salts, 0.1 percent by weight.

26 (d) Lead and its compounds, 0.1 percent by weight.

27 (e) Mercury and its compounds, 0.1 percent by weight.

28 (2) Beginning January 1, 2021, no manufacturer, wholesaler,
29 retailer, or distributor may sell or offer for sale brake friction
30 material in Washington state containing more than five percent copper
31 and its compounds by weight.

32 (3) Brake friction material manufactured prior to 2015 is exempt
33 from subsection (1) of this section for the purposes of clearing
34 inventory. This exemption expires January 1, 2025.

35 (4) Brake friction material manufactured prior to 2021 is exempt
36 from subsection (2) of this section for the purposes of clearing
37 inventory. This exemption expires January 1, 2031.

1 (5) Brake friction material manufactured as part of an original
2 equipment service contract for vehicles manufactured prior to January
3 1, 2015, is exempt from subsection (1) of this section.

4 (6) Brake friction material manufactured as part of an original
5 equipment service contract for vehicles manufactured prior to January
6 1, 2021, is exempt from subsection (2) of this section.

7 NEW SECTION. **Sec. 4.** (1) By December 1, 2015, the department
8 shall review risk assessments, scientific studies, and other relevant
9 analyses regarding alternative brake friction material and determine
10 whether the material may be available. The department shall consider
11 any new science with regard to the bioavailability and toxicity of
12 copper.

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

17 (a) A representative of the department, who will chair the
18 committee;

19 (b) The chief of the Washington state patrol, or the chief's
20 designee;

21 (c) A representative of manufacturers of brake friction material;

22 (d) A representative of manufacturers of motor vehicles;

23 (e) A representative of a nongovernmental organization concerned
24 with motor vehicle safety;

25 (f) A representative of the national highway traffic safety
26 administration; and

27 (g) A representative of a nongovernmental organization concerned
28 with the environment.

29 (3) If convened pursuant to subsection (2) of this section, the
30 committee shall separately assess alternative brake friction material
31 for passenger vehicles, light-duty vehicles, and heavy-duty vehicles.
32 The committee shall make different recommendations to the department as
33 to whether alternative brake friction material is available or
34 unavailable for passenger vehicles, light-duty vehicles, and heavy-duty
35 vehicles. For purposes of this section, "heavy-duty vehicle" means a
36 vehicle used for commercial purposes with a gross vehicle weight rating
37 above twenty-six thousand pounds. The committee shall also consider

1 appropriate exemptions including original equipment service and brake
2 friction material manufactured prior to the dates specified in section
3 5 of this act. The department shall consider the committee's
4 recommendations and make a finding as to whether alternative brake
5 friction material is available or unavailable.

6 (4) If, pursuant to subsection (3) of this section, the department
7 finds that alternative brake friction material:

8 (a) Is available, it shall comply with section 5 of this act;

9 (b) Is not available, it shall periodically evaluate the finding
10 and, if it determines that alternative brake friction material may be
11 available, comply with subsections (2) and (3) of this section. If the
12 department finds that alternative brake friction material is available,
13 it shall comply with section 5 of this act.

14 NEW SECTION. **Sec. 5.** If, pursuant to section 4 of this act, the
15 department finds that alternative brake friction material is available:

16 (1)(a) By December 31st of the year in which the finding is made,
17 the department shall publish the information required by section 4 of
18 this act in the Washington State Register and present it in a report to
19 the appropriate committees of the legislature; and

20 (b) The report must include recommendations for exemptions on
21 original equipment service and brake friction material manufactured
22 prior to dates specified in this section and may include
23 recommendations for other exemptions.

24 (2) Beginning eight years after the report in subsection (1) of
25 this section is published in the Washington State Register, no
26 manufacturer, wholesaler, retailer, or distributor may sell or offer
27 for sale brake friction material in Washington state containing more
28 than 0.5 percent copper and its compounds by weight, as specified in
29 the report.

30 (3) The department shall adopt rules to implement this section.

31 NEW SECTION. **Sec. 6.** Any motor vehicle manufacturer or brake
32 friction material manufacturer may apply to the department for an
33 exemption from this chapter for brake friction material intended for a
34 specific motor vehicle model or class of motor vehicles based on
35 special needs or characteristics of the motor vehicles for which the
36 brake friction material is intended. Exemptions may only be issued for

1 small volume motor vehicle manufacturers, specific motor vehicle
2 models, or special classes of vehicles, such as fire trucks, police
3 cars, and heavy or wide-load equipment hauling, provided the
4 manufacturer can demonstrate that complying with the requirements of
5 this chapter is not feasible, does not allow compliance with safety
6 standards, or causes significant financial hardship. Exemptions are
7 valid for no less than one year and may be renewed automatically as
8 needed or the exemption may be permanent for as long as the vehicle is
9 used in the manner described in the application.

10 NEW SECTION. **Sec. 7.** (1) By January 1, 2013, and at least every
11 three years thereafter, manufacturers of brake friction material sold
12 or offered for sale in Washington state shall provide data to the
13 department adequate to enable the department to determine
14 concentrations of antimony, copper, nickel, and zinc and their
15 compounds in brake friction material sold or offered for sale in
16 Washington state.

17 (2) Using data provided pursuant to subsection (1) of this section
18 and other data as needed, and in consultation with the brake friction
19 material manufacturing industry, the department must:

20 (a) By July 1, 2013, establish baseline concentration levels for
21 constituents identified in subsection (1) of this section in brake
22 friction material; and

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

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

35 (4) Confidential business information otherwise protected under RCW
36 43.21A.160 or chapter 42.56 RCW is exempt from public disclosure.

1 NEW SECTION. **Sec. 8.** (1) Manufacturers of brake friction material
2 offered for sale in Washington state must certify compliance with the
3 requirements of this chapter and mark proof of certification on the
4 brake friction material in accordance with criteria developed under
5 this section.

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

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

12 (b) Marked proof of certification, including manufacture date, on
13 brake friction material and product packaging. Marked proof of
14 certification must appear by January 1, 2015. Brake friction material
15 manufactured or packaged prior to January 1, 2015, is exempt from this
16 subsection (2)(b).

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

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

25 (2) Enforcement of this chapter by the department must rely on
26 notification and information exchange between the department and
27 manufacturers, distributors, and retailers. The department shall issue
28 one warning letter by certified mail to a manufacturer, distributor, or
29 retailer that sells or offers to sell brake friction material in
30 violation of this chapter, and offer information or other appropriate
31 assistance regarding compliance with this chapter. Once a warning
32 letter has been issued to a distributor or retailer for violations
33 under subsections (3) and (5) of this section, the department need not
34 provide warning letters for subsequent violations by that distributor
35 or retailer. For the purposes of subsection (6) of this section, a
36 warning letter serves as notice of the violation. If compliance is not
37 achieved, the department may assess penalties under this section.

1 (3) A brake friction material distributor or retailer that violates
2 this chapter is subject to a civil penalty not to exceed ten thousand
3 dollars for each violation. Brake friction material distributors or
4 retailers that sell brake friction material that is packaged consistent
5 with section 8(2)(b) of this act are not in violation of this chapter.
6 However, if the department conclusively proves that the brake friction
7 material distributor or retailer was aware that the brake friction
8 material being sold violates section 3 or 5 of this act, the brake
9 friction material distributor or retailer is subject to civil penalties
10 according to this section.

11 (4) A brake friction material manufacturer that knowingly violates
12 this chapter shall recall the brake friction material and reimburse the
13 brake friction distributor, retailer, or any other purchaser for the
14 material and any applicable shipping and handling charges for returning
15 the material. A brake friction material manufacturer that violates
16 this chapter is subject to a civil penalty not to exceed ten thousand
17 dollars for each violation.

18 (5) A motor vehicle distributor or retailer that violates this
19 chapter is subject to a civil penalty not to exceed ten thousand
20 dollars for each violation. A motor vehicle distributor or retailer is
21 not in violation of this chapter for selling a vehicle that was
22 previously sold at retail and that contains brake friction material
23 failing to meet the requirements of this chapter. However, if the
24 department conclusively proves that the motor vehicle distributor or
25 retailer installed brake friction material that violates section 3, 5,
26 or 8(2)(b) of this act on the vehicle being sold and was aware that the
27 brake friction material violates section 3, 5, or 8(2)(b) of this act,
28 the motor vehicle distributor or retailer is subject to civil penalties
29 under this section.

30 (6) A motor vehicle manufacturer that violates this chapter must
31 notify the registered owner of the vehicle within six months of
32 knowledge of the violation and must replace at no cost to the owner the
33 noncompliant brake friction material with brake friction material that
34 complies with this chapter. A motor vehicle manufacturer that fails to
35 provide the required notification to registered owners of the affected
36 vehicles within six months of knowledge of the violation is subject to
37 a civil penalty not to exceed one hundred thousand dollars. A motor
38 vehicle manufacturer that fails to provide the required notification to

1 registered owners of the affected vehicles after twelve months of
2 knowledge of the violation is subject to a civil penalty not to exceed
3 ten thousand dollars per vehicle. For purposes of this section, "motor
4 vehicle manufacturer" does not include a vehicle dealer defined under
5 RCW 46.70.011 and required to be licensed as a vehicle dealer under
6 chapter 46.70 RCW.

7 (7) Before the effective date of the prohibitions in section 3 or
8 5 of this act, the department shall prepare and distribute information
9 about the prohibitions to manufacturers, distributors, and retailers to
10 the maximum extent practicable.

11 (8) All penalties collected under this chapter must be deposited in
12 the state toxics control account created in RCW 70.105D.070.

13 NEW SECTION. **Sec. 10.** The department may adopt rules necessary to
14 implement this chapter.

15 NEW SECTION. **Sec. 11.** Sections 1 through 10 and 12 of this act
16 constitute a new chapter in Title 70 RCW.

17 NEW SECTION. **Sec. 12.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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