

FINAL BILL REPORT

SHB 1738

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Synopsis as Enacted

Brief Description: Continuing to protect water quality by aligning state brake friction material restrictions with the requirements of a similar nationwide agreement.

Sponsors: House Committee on Environment (originally sponsored by Representatives Doglio, Jenkin and Tarleton).

House Committee on Environment
Senate Committee on Energy, Environment & Telecommunications

Background:

Motor vehicle brake pads use friction to stop the vehicle's movement and may contain various friction materials, including copper and asbestos. During the normal operation of vehicle brakes, the brake pads deposit small amounts of brake pad materials on the road. Surface water runoff can then carry the deposited materials to rivers and marine environments. According to the Department of Ecology (ECY), copper is toxic to aquatic organisms and is of particular concern to the health of salmon.

Washington's Better Brakes Law.

Washington's Better Brakes Law restricts the content of brake friction material. This law requires the ECY to enforce restrictions on the use in brake pads of asbestos, cadmium, hexavalent chromium, mercury, and lead. Beginning January 1, 2021, brake friction material must also contain no more than 5 percent copper. Manufacturers, wholesalers, and distributors are given 10 years from the first day of regulation to sell remaining inventory, and existing equipment service contracts are exempt from sales restrictions.

Brake friction material manufactured or packaged after January 1, 2015, must include marked proof certifying that the brake complies with brake pad material restrictions. Beginning January 1, 2021, motor vehicle manufacturers must also ensure that the brake friction material in new vehicles complies with material restrictions.

The ECY may issue penalties for violation of brake pad material requirements. Prior to imposing a penalty, the ECY must issue a warning letter and offer other assistance to achieve compliance. Most violators are subject to a fine of up to \$10,000 per violation. A manufacturer of brake friction material that knowingly violates brake friction material

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restrictions must recall the material and reimburse costs to the purchaser. A violation by a motor vehicle manufacturer requires the manufacturer to notify the registered owner of the vehicle and replace the noncompliant brake friction material at no cost to the vehicle owner. Failure by motor vehicle manufacturers to comply with this notice and replacement requirement may result in a fine of up to \$100,000.

The following motor vehicles are exempt from the Better Brakes Law:

- motorcycles;
- collector vehicles;
- military combat vehicles;
- race cars, dual-sport vehicles, or track day vehicles; and
- vehicles with brake systems that emit no debris or fluid under normal circumstances.

Additionally, certain manufacturers of motor vehicles and brake friction material may apply to the ECY for an exemption by demonstrating that compliance with the required standard is not feasible, compromises safety standards, or causes a significant financial hardship.

The ECY may adopt rules necessary to implement the Better Brakes Law.

Recent Developments Under Washington's Better Brakes Law.

In addition to establishing a maximum 5 percent copper requirement for brake pads by 2021, the Better Brakes Law provided a process to further decrease the copper content of brakes. The Better Brakes Law directed the ECY, with help from a Brake Friction Advisory Committee (Committee), to determine the availability of alternative, less-harmful brake friction material, specifically material containing no more than 0.5 percent copper. The Committee, which the ECY was required to convene, included the following:

- an ECY representative;
- a Washington State Patrol representative;
- a brake friction material manufacturer;
- a motor vehicle manufacturer;
- a National Highway Traffic Safety Administration representative; and
- a representative from a nongovernmental organization concerned with the environment.

If the Committee and the ECY determined that alternative brake friction material was available, the ECY was required to publish its findings in the Washington State Register and adopt rules, to take effect eight years after publication, requiring brake friction material to contain no more than 0.5 percent copper.

The ECY, based on the Committee's recommendations, recently found that alternative brake friction material is available. On January 9, 2017, the ECY published its findings in the Washington State Register. Therefore, the ECY must restrict the sale of brake friction material containing more than 0.5 percent copper beginning January 9, 2025.

National Developments.

In 2015 the United States Environmental Protection Agency, the Environmental Council of the States, and several stakeholder organizations, including brake manufacturers, signed a memorandum of understanding to phase out copper and other specified materials in brake

pads. The understanding is voluntary and declares that it is not intended to be legally binding or create any contractual obligations. The parties agreed to limit the amount of copper in brake friction material to no more than 0.5 percent by January 1, 2025.

Summary:

The date in state law by which copper in brake friction material must be limited to no more than 0.5 percent is harmonized with the copper phase-out timeline set in the national memorandum of understanding. Beginning on January 1, 2025, brake pad manufacturers, wholesalers, retailers, and distributors must limit copper in brake friction material to 0.5 percent or less. Manufacturers, wholesalers, and distributors are given 10 years to sell their then-remaining brake-pad inventory, and equipment service contracts for vehicles manufactured before 2025 are exempt from the restrictions.

The requirement, but not the authority, for the Department of Ecology (ECY) to adopt rules to implement the 2025 restrictions on copper in brake pads is eliminated. The ECY may not adopt rules that exceed the terms explicitly established by the Better Brakes Law.

Votes on Final Passage:

House	57	40
Senate	47	2

Effective: July 23, 2017