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SENATE BILL 12

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO WATER QUALITY; ENACTING THE DENTAL AMALGAM WASTE
REDUCTION ACT; REQUIRING A DENTAL OFFICE TO REMOVE DENTAL
AMALGAM PRIOR TO DISCHARGE OF ITS WASTEWATER; AMENDING A
SECTION OF THE DENTAL HEALTH CARE ACT; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 6 of this act may be cited as the "Dental Amalgam Waste
Reduction Act".

SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Dental Amalgam Waste Reduction Act:

A. "amalgam" means a dental restorative material
that is typically composed of mercury, silver, tin and copper,
along with other metallic elements, and that is used by a

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1 dentist to restore a cavity in a tooth;

2 B. "amalgam separator" means a device that removes
3 dental amalgam from the waste stream prior to discharge into
4 either the local public wastewater system or a private septic
5 system and that meets a minimum removal efficiency in
6 accordance with international standards contained in *ISO 11143,*
7 *Dental Equipment-Amalgam Separators,* published by the
8 international organization for standardization; and

9 C. "dental office" means a fixed physical structure
10 in which dental services are provided to patients by dentists
11 and dental professionals licensed or certified by the New
12 Mexico board of dental health care under the management of a
13 licensed owner, operator or designee.

14 SECTION 3. [NEW MATERIAL] INSTALLATION OF AMALGAM
15 SEPARATOR REQUIRED.--By December 31, 2012, a dental office
16 shall install an appropriately sized amalgam separator system
17 and, upon inspection for cause, shall demonstrate to the New
18 Mexico board of dental health care proper installation,
19 operation, maintenance and amalgam waste recycling or disposal
20 in accordance with an amalgam separator manufacturer's
21 recommendations. The New Mexico board of dental health care
22 shall consider noncompliance with the Dental Amalgam Waste
23 Reduction Act as unprofessional conduct subject to the
24 penalties and discipline of the board pursuant to the Uniform
25 Licensing Act and the Dental Health Care Act.

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1 SECTION 4. [NEW MATERIAL] EXEMPTION FOR CERTAIN DENTAL
2 OFFICES.--An amalgam separator system shall not be required for
3 the offices or clinical site of:

- 4 A. a dental office that is not engaged in amalgam
5 placement, removal or modification;
- 6 B. an orthodontist;
- 7 C. a periodontist;
- 8 D. an oral maxillofacial surgeon;
- 9 E. an oral maxillofacial radiologist;
- 10 F. an oral pathologist;
- 11 G. a dentist who will no longer operate a dental
12 office after December 31, 2011; or
- 13 H. a portable dental office without a fixed
14 connection for wastewater discharge.

15 SECTION 5. [NEW MATERIAL] REPORTING.--A dental office
16 shall report the model and size of its amalgam separator system
17 within ninety days of installation to its local publicly owned
18 water treatment facility, where applicable, and to the New
19 Mexico board of dental health care. A dental office shall
20 report its compliance and maintain records of the operation,
21 maintenance and recycling or disposal of amalgam waste for
22 every consecutive three-year period following the installation
23 of its amalgam separator system and shall report the
24 information upon request for cause to the New Mexico board of
25 dental health care. The New Mexico board of dental health care

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1 shall retain the reported information for review coincident
2 with the board's licensing and renewal functions.

3 SECTION 6. [NEW MATERIAL] ENFORCEMENT.--The New Mexico
4 board of dental health care shall initiate disciplinary
5 proceedings for willful and persistent noncompliance with the
6 provisions of the Dental Amalgam Waste Reduction Act.

7 SECTION 7. Section 61-5A-10 NMSA 1978 (being Laws 1994,
8 Chapter 55, Section 10, as amended by Laws 2003, Chapter 408,
9 Section 6 and by Laws 2003, Chapter 409, Section 8) is amended
10 to read:

11 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND
12 COMMITTEE.--In addition to any other authority provided by law,
13 the board and the committee, [~~where~~] when designated, shall
14 have the power to:

15 A. enforce and administer the provisions of the
16 Dental Health Care Act and the Dental Amalgam Waste Reduction
17 Act;

18 B. adopt, publish, file and revise, in accordance
19 with the Uniform Licensing Act and the State Rules Act, all
20 rules as may be necessary to:

21 (1) regulate the examination and licensure of
22 dentists and, through the committee, regulate the examination
23 and licensure of dental hygienists;

24 (2) provide for the examination and
25 certification of dental assistants by the board;

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1 (3) provide for the regulation of dental
2 technicians by the board;

3 (4) regulate the practice of dentistry, dental
4 assisting and, through the committee, regulate the practice of
5 dental hygiene; and

6 (5) provide for the regulation and licensure
7 of non-dentist owners by the board;

8 C. adopt and use a seal;

9 D. administer oaths to all applicants, witnesses
10 and others appearing before the board or the committee, as
11 appropriate;

12 E. keep an accurate record of all meetings,
13 receipts and disbursements;

14 F. grant, deny, review, suspend and revoke licenses
15 and certificates to practice dentistry, dental assisting and,
16 through the committee, dental hygiene and censure, reprimand,
17 fine and place on probation and stipulation dentists, dental
18 assistants and, through the committee, dental hygienists, in
19 accordance with the Uniform Licensing Act for any cause stated
20 in the Dental Health Care Act and the Dental Amalgam Waste
21 Reduction Act;

22 G. grant, deny, review, suspend and revoke licenses
23 to own dental practices and censure, reprimand, fine and place
24 on probation and stipulation non-dentist owners, in accordance
25 with the Uniform Licensing Act, for any cause stated in the

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1 Dental Health Care Act and the Dental Amalgam Waste Reduction
2 Act;

3 H. maintain records of the name, address, license
4 number and such other demographic data as may serve the needs
5 of the board of licensees, together with a record of license
6 renewals, suspensions, revocations, probations, stipulations,
7 censures, reprimands and fines. The board shall make available
8 composite reports of demographic data, but shall limit public
9 access to information regarding individuals to their names,
10 addresses, license numbers and license actions or as required
11 by statute;

12 I. establish ad hoc committees whose members shall
13 be appointed by the [~~chairman~~] chair with the advice and
14 consent of the board or committee and shall include at least
15 one member of the board or committee, as it deems necessary for
16 carrying on its business;

17 J. have the authority to pay per diem and mileage
18 to individuals who are appointed by the board or the committee
19 to serve on ad hoc committees;

20 K. have the authority to hire or contract with
21 investigators to investigate possible violations of the Dental
22 Health Care Act and the Dental Amalgam Waste Reduction Act;

23 L. have the authority to issue investigative
24 subpoenas prior to the issuance of a notice of contemplated
25 action for the purpose of investigating complaints against

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1 dentists, dental assistants and, through the committee, dental
2 hygienists licensed under the Dental Health Care Act and the
3 Dental Amalgam Waste Reduction Act; and

4 M. establish continuing education or continued
5 competency requirements for dentists, certified dental
6 assistants in expanded functions, dental technicians and,
7 through the committee, dental hygienists."

8 SECTION 8. TEMPORARY PROVISION--RULEMAKING BY THE NEW
9 MEXICO BOARD OF DENTAL HEALTH CARE.--The New Mexico board of
10 dental health care shall promulgate rules by June 30, 2012 to
11 require that a dental office maintain records of maintenance
12 and inspection for the three years following the most recent
13 inspection of an amalgam separator. Use of an amalgam
14 separation method or technology that is approved by the
15 department of environment, the water quality control commission
16 or the New Mexico board of dental health care is in compliance
17 with the requirements of this section.