

1 SENATE BILL 108

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Peter Wirth

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9  
10 AN ACT

11 RELATING TO WATER QUALITY; ENACTING THE DENTAL AMALGAM WASTE  
12 REDUCTION ACT; REQUIRING A DENTAL OFFICE TO REMOVE DENTAL  
13 AMALGAM PRIOR TO DISCHARGE OF ITS WASTEWATER; AMENDING A  
14 SECTION OF THE DENTAL HEALTH CARE ACT.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

22 A. "amalgam" means a dental restorative material  
23 that is typically composed of mercury, silver, tin and copper,  
24 along with other metallic elements, and that is used by a  
25 dentist to restore a cavity in a tooth;

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

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

13           **SECTION 3. [NEW MATERIAL] INSTALLATION OF AMALGAM**  
14 **SEPARATOR REQUIRED.--**By December 31, 2014, a dental office  
15 shall install an appropriately sized amalgam separator system  
16 and, upon inspection for cause, shall demonstrate to the New  
17 Mexico board of dental health care proper installation,  
18 operation, maintenance and amalgam waste recycling or disposal  
19 in accordance with an amalgam separator manufacturer's  
20 recommendations. The New Mexico board of dental health care  
21 shall consider noncompliance with the Dental Amalgam Waste  
22 Reduction Act as unprofessional conduct subject to the  
23 penalties and discipline of the board pursuant to the Uniform  
24 Licensing Act and the Dental Health Care Act.

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

3 A. a dental office that is not engaged in amalgam  
4 placement, removal or modification;

5 B. an orthodontist;

6 C. a periodontist;

7 D. an oral maxillofacial surgeon;

8 E. an oral maxillofacial radiologist;

9 F. an oral pathologist;

10 G. a dentist who will no longer operate a dental  
11 office after December 31, 2013; or

12 H. a portable dental office without a fixed  
13 connection for wastewater discharge.

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

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1 with the board's licensing and renewal functions.

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

6 SECTION 7. Section 61-5A-10 NMSA 1978 (being Laws 1994,  
7 Chapter 55, Section 10, as amended) is amended to read:

8 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND  
9 COMMITTEE.--In addition to any other authority provided by law,  
10 the board and the committee, when designated, shall:

11 A. enforce and administer the provisions of the  
12 Dental Health Care Act and the Dental Amalgam Waste Reduction  
13 Act;

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

17 (1) regulate the examination and licensure of  
18 dentists and, through the committee, regulate the examination  
19 and licensure of dental hygienists;

20 (2) provide for the examination and  
21 certification of dental assistants by the board;

22 (3) provide for the regulation of dental  
23 technicians by the board;

24 (4) regulate the practice of dentistry and  
25 dental assisting and, through the committee, regulate the

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1 practice of dental hygiene; and

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

4 C. adopt and use a seal;

5 D. administer oaths to all applicants, witnesses  
6 and others appearing before the board or the committee, as  
7 appropriate;

8 E. keep an accurate record of all meetings,  
9 receipts and disbursements;

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

18 G. grant, deny, review, suspend and revoke licenses  
19 to own dental practices and censure, reprimand, fine and place  
20 on probation and stipulation non-dentist owners, in accordance  
21 with the Uniform Licensing Act, for any cause stated in the  
22 Dental Health Care Act and the Dental Amalgam Waste Reduction  
23 Act;

24 H. maintain records of the name, address, license  
25 number and such other demographic data as may serve the needs

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1 of the board of licensees, together with a record of license  
2 renewals, suspensions, revocations, probations, stipulations,  
3 censures, reprimands and fines. The board shall make available  
4 composite reports of demographic data but shall limit public  
5 access to information regarding individuals to their names,  
6 addresses, license numbers and license actions or as required  
7 by statute;

8 I. hire and contract for services from persons as  
9 necessary to carry out the board's duties;

10 J. establish ad hoc committees whose members shall  
11 be appointed by the chair with the advice and consent of the  
12 board or committee and shall include at least one member of the  
13 board or committee as it deems necessary for carrying on its  
14 business;

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

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

21 M. have the authority to issue investigative  
22 subpoenas prior to the issuance of a notice of contemplated  
23 action for the purpose of investigating complaints against  
24 dentists, dental assistants and, through the committee, dental  
25 hygienists licensed under the Dental Health Care Act and the

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1 Dental Amalgam Waste Reduction Act;

2 N. have the authority to sue or be sued and to  
3 retain the services of an attorney at law for counsel and  
4 representation regarding the carrying out of the board's  
5 duties;

6 O. have the authority to create and maintain a  
7 formulary, in consultation with the board of pharmacy, of  
8 medications that a dental hygienist may prescribe, administer  
9 or dispense in accordance with rules the board has promulgated;  
10 and

11 P. establish continuing education or continued  
12 competency requirements for dentists, certified dental  
13 assistants in expanded functions, dental technicians and,  
14 through the committee, dental hygienists."

15 SECTION 8. TEMPORARY PROVISION--RULEMAKING BY THE NEW  
16 MEXICO BOARD OF DENTAL HEALTH CARE.--The New Mexico board of  
17 dental health care shall promulgate rules by June 30, 2014 to  
18 require that a dental office maintain records of maintenance  
19 and inspection for the three years following the most recent  
20 inspection of an amalgam separator. Use of an amalgam  
21 separation method or technology that is approved by the  
22 department of environment, the water quality control commission  
23 or the New Mexico board of dental health care is in compliance  
24 with the requirements of this section.