SPONSOR: Sen. Hansen & Rep. Osienski
Sens. Ennis, Lockman, Lopez, Paradee, Pettyjohn, Pinkney, Poore, Sturgeon, Townsend, Walsh; Reps. Baumbach, K. Johnson, Lambert, S. Moore

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 28

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO ACCIDENT STATISTICS AND REPORTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 313, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 313. Accident statistics and reports; evidence.

(a) The Department of Safety and Homeland Security shall prepare and ~~may~~ supply to ~~police and sheriff's offices and other suitable~~ law-enforcement agencies forms for accident reports ~~calling for~~ that require sufficiently detailed information ~~to disclose with reference to a highway accident~~ about the cause, conditions then ~~existing~~ existing, and the persons and vehicles ~~involved.~~ involved in a highway accident.

(b)~~(1) The Department of Safety and Homeland Security shall receive accident reports required to be made by law and shall tabulate and analyze the accident reports and publish annually, or at more frequent intervals, statistical information based on the accident reports regarding the number, cause, and location of highway accidents.~~

~~(2) All the following applies to a report under this subsection:~~

~~a. The report is without prejudice.~~

~~b. The information in the report is for the Department of Safety and Homeland Security and the Department of Transportation.~~

~~c. Reports are not open to public inspection.~~

~~(3) Accident reports made under this subsection are~~ Except as provided under this section, accident reports and any data or statistics derived from an accident report are without prejudice, are solely for the information of the Department of Safety and Homeland Security and the Department of Transportation, and are not a public record under the Freedom of Information Act, Chapter 100 of Title 29. The fact that an accident report has been made is admissible in evidence solely to prove compliance with this section but no accident report or any part or statement contained in a report is admissible in evidence for any other purpose in any trial, civil or criminal, arising out of an accident.

(c)(1) An accident report may be disclosed only to the following:

a. A person, or the person's legal representative, who requests a copy of the person's own accident report.

b. An insurer, insurance support organization, or a self-insured entity or its agent, employee, or contractor, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

(2)a. The person requesting an accident report under paragraph (c)(1) of this section must submit proof of identity and payment of the fee established by the law-enforcement agency with primary jurisdiction over the accident.

b. A fee under paragraph (c)(2)a. of this section must approximate and reasonably reflect the amount necessary to defray the costs incurred by the law-enforcement agency to provide a copy of the accident report.

(3) Notwithstanding paragraphs (c)(1) through (c)(2) of this section, an accident report associated with a criminal prosecution may be withheld from disclosure until the criminal prosecution has concluded.

(d) ~~The~~ Upon written request, the Department of Transportation may ~~provide the information under this subsection~~ prepare a document containing a quantitative analysis of de-identified data if the person requesting the information provides proof of identity and a ~~sworn~~ representation that the data will be strictly used for any of the following purposes:

~~a.~~ (1) To comply with federal, state, or local law or ~~regulations.~~ regulation.

~~b.~~ (2) By ~~a municipality or municipal planning organization~~ any of the following in carrying out official ~~functions.~~ functions:

a. A municipality or its agents.

b. A municipal planning organization or its agents.

c. A member of the General Assembly.

~~(2) If permitted under paragraph (c)(1) of this section, the Department of Transportation may prepare a document containing a quantitative analysis of de-identified data with any of the following information:~~

(e) The State shall make some de-identified data available public through press releases, publication, or a state-managed website. The Department of Safety and Homeland Security has the sole discretion to determine what data may be disclosed under this subsection. except that the data on the state-managed website must include all of the following:

~~a.~~ (1) Accident classification.

~~b.~~ (2) Manner of impact.

~~c.~~ (3) Alcohol or drug involvement.

~~d.~~ (4) Date and time of accident.

~~e.~~ (5) Conditions regarding road surface, lighting, and weather.

~~f.~~ (6) Seat belt or helmet use.

~~g.~~ (7) Geographic location.

~~h.~~ (8) ~~Contributing factors, including speed.~~ Primary contributing circumstances.

~~(3) The Department of Transportation may share traffic studies or analysis that contain the information permitted under paragraph (c)(2) of this section that the Department of Transportation has prepared in carrying out its functions.~~

~~(d) Accident reports and crash data under this section are not public records under the Freedom of Information Act, Chapter 100 of Title 29.~~

(f) Notwithstanding any provision under this section, the Director of the Delaware Criminal Justice Information System (DELJIS) may enter into a contractual agreement for the sale of de-identified data if the contracting party's use of the information is related to public safety. A contract under this subsection may include pricing models based on DELJIS's cost to produce, maintain, and distribute the records containing the information. The Department of Safety and Homeland Security has sole discretion to determine the data that may be disclosed under this subsection.

SYNOPSIS

This Act represents the consensus agreement among the Department of Safety and Homeland Security, the Department of Transportation, and stakeholders to provide the public with access to de-identified accident data. Access to the crash history of intersections will enable the public to weigh in on development discussions and roadway projects. This Act also clarifies when accident reports may be released and the purposes for which accident reports can be used.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act requires a greater than majority vote for passage because § 11(a) of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose a fee and this Act codifies the existing practice of allowing a state law-enforcement agency to charge a reasonable fee for a copy of an accident report.

Author: Senator Hansen