

CHAPTER 280

MOTOR VEHICLES AND TRAFFIC REGULATION

HOUSE BILL 17-1315

BY REPRESENTATIVE(S) Singer and Lawrence, Benavidez, Covarrubias, Hamner, Hooton, McKean, Melton, Rosenthal, Thurlow, Van Winkle, Williams D., Young, Catlin, Jackson, Pettersen, Saine, Sias, Wilson;
also SENATOR(S) Gardner and Fields, Aguilar, Cooke, Garcia, Holbert, Jahn, Kefalas, Martinez Humenik, Priola, Scott, Smallwood, Tate, Todd.

AN ACT

CONCERNING THE ACQUISITION OF DATA TO ANALYZE THE TYPES OF DUI OFFENSES BEING COMMITTED BY OFFENDERS AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-33.5-520 as follows:

24-33.5-520. Study on drugged driving - substance-affected driving data-analysis cash fund created - report - definitions. (1) ON OR BEFORE MARCH 1, 2018, AND ON OR BEFORE MARCH 1 EACH YEAR THEREAFTER, THE DIVISION SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND SENATE, OR TO ANY SUCCESSOR COMMITTEES, THAT INCLUDES, TO THE EXTENT POSSIBLE, THE FOLLOWING INFORMATION:

(a) THE TOTAL NUMBER OF CITATIONS MADE FOR SUSPECTED SUBSTANCE-AFFECTED DRIVING VIOLATIONS DURING THE REPORTING PERIOD;

(b) OF THE TOTAL NUMBER OF CITATIONS MADE FOR SUSPECTED SUBSTANCE-AFFECTED DRIVING DURING THE REPORTING PERIOD, THE TOTAL NUMBER OF SUCH CITATIONS THAT RESULTED IN THE FILING OF A SUBSTANCE-AFFECTED DRIVING CHARGE AGAINST THE DRIVER, INCLUDING AN INDICATION OF HOW MANY SUCH CASES INVOLVED ALCOHOL, ONE OR MORE DRUGS, OR A COMBINATION OF ALCOHOL AND ONE OR MORE DRUGS;

(c) OF THE FILED CASES, HOW MANY RESULTED IN AT LEAST ONE CONVICTION FOR SUBSTANCE-AFFECTED DRIVING;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) OF THE CASES THAT RESULTED IN AT LEAST ONE CONVICTION FOR SUBSTANCE-AFFECTED DRIVING, AND FOR WHICH EVIDENTIARY TEST RESULTS ARE AVAILABLE, WHICH DRUGS, INCLUDING ALCOHOL, OR COMBINATION OF DRUGS WERE PRESENT IN THE DEFENDANTS' BODIES, AND, FOR ALCOHOL AND MARIJUANA, THE LABORATORY VALUES;

(e) THE TOTAL NUMBER OF DUI AND DWAI CASES DURING THE REPORTING PERIOD THAT INVOLVED:

(I) ALCOHOL;

(II) MARIJUANA;

(III) SCHEDULE I DRUGS, AS DESCRIBED IN SECTION 18-18-203, OTHER THAN MARIJUANA; OR

(IV) OTHER DRUGS; AND

(f) FOR THOSE CASES IN WHICH EVIDENTIARY TEST RESULTS ARE AVAILABLE, FOR EACH TYPE OF BIOLOGICAL SAMPLE TAKEN, THE TIME THAT ELAPSED BETWEEN THE TIME THAT EACH TRAFFIC STOP OR TRAFFIC INCIDENT OCCURRED AND THE TIME AT WHICH THE BIOLOGICAL SAMPLE WAS TAKEN.

(2) (a) FOR THE PURPOSE OF PRODUCING THE REPORT DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE DIVISION SHALL COLLECT AND ANALYZE SUBSTANCE-AFFECTED DRIVING VIOLATION DATA AS FOLLOWS:

(I) FROM THE STATE JUDICIAL BRANCH AND FROM THE DENVER COUNTY COURT, THE DIVISION SHALL COLLECT CASE-IDENTIFIER DATA, EVENT DATA, FILING DATES, DATA IDENTIFYING LAW ENFORCEMENT AGENCIES, DEMOGRAPHIC DATA RELATING TO EACH DEFENDANT, DATA INDICATING THE CAUSE OF EACH SUBSTANCE-AFFECTED DRIVING CITATION, COURT FINDINGS, AND SENTENCES;

(II) FROM FORENSIC TOXICOLOGY LABORATORIES ONLY, AND FROM NO OTHER SOURCE, THE DIVISION, TO THE EXTENT POSSIBLE, SHALL COLLECT CASE-IDENTIFIER DATA, EVENT DATES AND TIMES, COLLECTION DATES AND TIMES, AND CONFIRMATORY LABORATORY VALUES FROM REPORTS CREATED FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS AND SHALL SPECIFY THE NAME OF EACH DRUG THAT WAS CONFIRMED AND ITS LABORATORY VALUE;

(III) FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE DIVISION SHALL COLLECT EVIDENTIARY BREATH ALCOHOL TEST RESULTS, INCLUDING CASE-IDENTIFIER DATA, EVENT DATES AND TIMES, AND THE RESULTS OBTAINED ON EVIDENTIARY BREATH ALCOHOL TESTING DEVICES CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; AND

(IV) FROM THE DIVISION OF PROBATION SERVICES, THE DIVISION SHALL COLLECT CASE-IDENTIFIER DATA AND, TO THE EXTENT POSSIBLE, DATA CONCERNING THE CLASSES AND TYPES OF DRUGS THAT WERE INVOLVED IN EACH SUBSTANCE-AFFECTED DRIVING INCIDENT.

(b) THE DATABASE COMPILED BY THE DIVISION CONTAINING PERSONAL IDENTIFYING INFORMATION RELATING TO THE TEST RESULTS OF PERSONS' BIOLOGICAL SAMPLES, AND ALL PERSONAL IDENTIFYING INFORMATION THEREOF, ARE NOT PUBLIC INFORMATION AND ARE NOT SUBJECT TO THE PROVISIONS OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24. THE DIVISION SHALL DISCLOSE INFORMATION ONLY BY MEANS OF THE REPORT DESCRIBED IN SUBSECTION (1) OF THIS SECTION, WHICH MUST NOT INCLUDE ANY PERSONAL IDENTIFYING INFORMATION.

(3) A PUBLIC OR PRIVATE LABORATORY CARRYING OUT ANALYSIS OF EVIDENTIARY SAMPLES THAT WERE TAKEN BY A LAW ENFORCEMENT AGENCY AND SUBMITTED TO THE LABORATORY PURSUANT TO SECTION 42-4-1301.1 SHALL COLLECT AND SHARE TEST RESULTS WITH THE DIVISION FOR THE PURPOSES OF THIS SECTION. THE DIVISION SHALL NOT DISCLOSE ANY PERSONAL IDENTIFYING INFORMATION THAT IS INCLUDED IN SUCH TEST RESULTS.

(4) (a) THERE IS CREATED IN THE STATE TREASURY THE SUBSTANCE-AFFECTED DRIVING DATA-ANALYSIS CASH FUND, REFERRED TO IN THIS SECTION AS THE "FUND", TO INCLUDE MONEY COLLECTED FROM SURCHARGES ASSESSED PURSUANT TO SECTION 42-4-1307 (10)(e) AND ANY MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION. THE MONEY IN THE FUND IS SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DIVISION FOR THE PURPOSE DESCRIBED IN SUBSECTION (1) OF THIS SECTION. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND REMAINS IN THE FUND. ANY UNEXPENDED OR UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAINS IN THE FUND AND MAY NOT BE TRANSFERRED OR CREDITED TO THE GENERAL FUND OR ANOTHER FUND.

(b) THE DIVISION MAY ACCEPT ANY GIFTS, GRANTS, OR DONATIONS FROM ANY PRIVATE OR PUBLIC SOURCE ON BEHALF OF THE STATE FOR PURPOSES OF THIS SECTION. THE DIVISION SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEY RECEIVED THROUGH GRANTS, GIFTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

(c) THE DIVISION MAY USE MONEY IN THE FUND TO REIMBURSE AND PROVIDE ADVANCE PAYMENTS TO STATE, MUNICIPAL, AND PRIVATE AGENCIES AND LABORATORIES THAT APPLY TO THE DIVISION FOR PAYMENT OF COSTS THEY INCUR IN COMPLYING WITH THIS SECTION.

(5) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORT DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT SUBJECT TO THE EXPIRATION DATE DESCRIBED IN SAID SECTION 24-1-136 (11)(a)(I).

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES OTHERWISE:

(a) "FORENSIC TOXICOLOGY LABORATORY" MEANS A FORENSIC TOXICOLOGY LABORATORY THAT IS CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO PERFORM TESTING OF SAMPLES COLLECTED FROM INDIVIDUALS SUSPECTED OF DUI, DUI PER SE, OR DWAI.

(b) "REPORTING PERIOD" MEANS THE CALENDAR YEAR ENDING FOURTEEN

MONTHS BEFORE THE MARCH 1 DUE DATE OF THE REPORT.

(c) "SUBSTANCE-AFFECTED DRIVING" MEANS DRIVING IN VIOLATION OF SECTION 42-4-1301 (1)(a), (1)(b), OR (2)(a); SECTION 18-3-106 (1)(b); OR SECTION 18-3-205 (1)(b).

(7) THE DEPARTMENT OF PUBLIC SAFETY SHALL INCLUDE THE REPORT DESCRIBED IN SUBSECTION (1) OF THIS SECTION IN THE DEPARTMENT'S ANNUAL PRESENTATION TO THE COMMITTEES OF REFERENCE PURSUANT TO SECTION 2-7-203.

SECTION 2. In Colorado Revised Statutes, 42-4-1304, **amend** (7) as follows:

42-4-1304. Samples of blood or other bodily substance - duties of department of public health and environment. (7) The office of the highway safety coordinator, the department, ~~and~~ the Colorado state patrol, ~~shall~~ AND THE DIVISION OF CRIMINAL JUSTICE WITHIN THE DEPARTMENT OF PUBLIC SAFETY ~~have access to the results of the tests of such samples taken as a result of a traffic crash for statistical analysis.~~ The division of parks and wildlife ~~shall have~~ HAS access to the results of the tests of ~~such~~ samples taken as a result of a boating accident for statistical analysis.

SECTION 3. In Colorado Revised Statutes, 42-4-1307, **add** (10)(e) as follows:

42-4-1307. Penalties for traffic offenses involving alcohol and drugs - legislative declaration - definitions - repeal. (10) **Additional costs and surcharges.** In addition to the penalties prescribed in this section:

(e) PERSONS CONVICTED OF DUI, DUI PER SE, DWAI, VEHICULAR ASSAULT AS DESCRIBED IN SECTION 18-3-205 (1)(b), OR VEHICULAR HOMICIDE AS DESCRIBED IN SECTION 18-3-106 (1)(b) SHALL PAY A DATA-ANALYSIS SURCHARGE OF TWO DOLLARS TO BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL DEPOSIT MONEY COLLECTED FOR THE SURCHARGE IN THE SUBSTANCE-AFFECTED DRIVING DATA-ANALYSIS CASH FUND CREATED IN SECTION 24-33.5-520. EXCEPT IN THE CASE OF AN INDIGENT DEFENDANT, THE COURT HAS NO DISCRETION TO WAIVE THIS SURCHARGE.

SECTION 4. Appropriation. (1) For the 2017-18 state fiscal year, \$20,352 is appropriated to the department of public safety. This appropriation is from the substance-affected driving data-analysis cash fund created in section 24-33.5-520 (4)(a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$15,000 for use by the division of criminal justice for payments to private laboratories; and

(b) \$5,352 for transfer to the department of public health and environment.

(2) For the 2017-18 state fiscal year, \$5,352 is appropriated to the department of public health and environment and is based on an assumption that the department will require an additional 0.1 FTE. This appropriation is from reappropriated funds received from the department of public safety under subsection (1)(b) of this

section. To implement this act, the department may use this appropriation to provide breath alcohol test results to the department of public safety.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 1, 2017