

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 992

Short Title: Phoebe's Law. (Public)

Sponsors: Representatives Murry, Horn, Whitmire, and Glazier (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee A, if favorable, Transportation, if favorable, Finance, if favorable, Appropriations.

April 18, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM TO IMPROVE PUBLIC SAFETY BY AUTHORIZING THE USE OF ELECTRONIC SPEED-MEASURING SYSTEMS BY THE DEPARTMENT OF TRANSPORTATION TO DETECT SPEED LIMIT VIOLATIONS IN HIGHWAY WORK AND SCHOOL ZONES, TO ESTABLISH STANDARDS FOR THE APPROVAL, USE, AND CALIBRATION OF ELECTRONIC SPEED-MEASURING SYSTEMS, TO ESTABLISH A CIVIL PENALTY FOR SPEED VIOLATIONS IN WORK AND SCHOOL ZONES THAT ARE DETECTED BY THOSE SYSTEMS, TO CREATE A NEW SPECIAL FUND WITHIN THE STATE CIVIL PENALTY AND FORFEITURE FUND, TO PROVIDE FOR THE PAYMENT OF THE PENALTIES INTO THE DESIGNATED SPECIAL FUND, AND TO DECREASE THE AMOUNT OF HIGHWAY FUNDS TRANSFERRED TO THE DEPARTMENT OF PUBLIC INSTRUCTION FOR DRIVERS EDUCATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-141.7. Use of electronic speed-measuring systems to detect speed limit violations in work and school zones.

(a) Authorization. – Electronic speed-measuring systems may be used to detect violations of the speed limit set by G.S. 20-141(j2) for highway work zones and violations of the speed limit set by G.S. 20-141.1 for State-maintained highways in school zones.

(b) Definition. – As used in this section, an electronic speed-measuring system is a mobile or fixed device (i) consisting of an automated traffic camera and sensor and (ii) capable of measuring the speed and producing one or more digital photographs of a motor vehicle violating a speed limit set by G.S. 20-141(j2) or G.S. 20-141.1.

(c) Minimum Standards. – An electronic speed-measuring system authorized for use by this section shall produce at least one photograph that clearly shows a recorded image of the vehicle speeding; the vehicle registration number and state of issuance; the date, time, and location of the violation; and the recorded speed.

(d) Signage. – The Department of Transportation shall provide notice of the presence of an electronic speed-measuring system by posting a conspicuous warning sign not more than 1,000 feet from the location of the system. All warning signs shall be consistent with a statewide standard adopted by the Department of Transportation.



1 (e) Use. – An electronic speed-measuring system authorized for use by this section
2 shall be approved by the Secretary of Transportation. No local government may operate an
3 electronic speed-measuring system.

4 (f) Penalty. – Except as provided by subsection (i) of this section, a violation of a speed
5 limit in a highway work zone established pursuant to G.S. 20-141(j2) or a speed limit on a
6 State-maintained highway within a school zone established pursuant to G.S. 20-141.1 that is
7 detected by an electronic speed-measuring system is a noncriminal violation for which a civil
8 penalty shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned
9 to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65. The
10 civil penalty shall be two hundred fifty dollars (\$250.00) for a violation of a speed limit in a
11 highway work zone established pursuant to G.S. 20-141(j2) or a speed limit on a State
12 maintained highway within a school zone established pursuant to G.S. 20-141.1.

13 (g) Notification of Violation. – The Department of Transportation shall issue to the
14 registered owner of a motor vehicle cited for a speeding violation detected by an electronic
15 speed-measuring system a notice of the violation containing all of the information listed in this
16 subsection. The notice shall be delivered by first-class United States mail at the address on the
17 current registration of the vehicle's owner and is deemed served on the registered owner five
18 days after the mailing. The notice of the violation shall contain all of the following:

- 19 (1) The recorded image of the vehicle speeding.
- 20 (2) The vehicle registration number and state of issuance.
- 21 (3) The date, time, and location of the violation.
- 22 (4) The recorded speed.
- 23 (5) The process for paying the civil penalty or contesting the owner's
24 responsibility for the violation.

25 (h) Liability. – The registered owner of a vehicle cited for a speeding violation detected
26 by an electronic speed-measuring system shall be responsible for any penalty imposed under
27 this section unless, within 30 days of service of the notification of violation, the owner provides
28 to the Division of Motor Vehicles a sworn affidavit containing the information listed in one of
29 the subdivisions of this subsection. If the registered owner fails to pay the civil penalty or fails
30 to respond to the notice within 30 days of service of the notification of violation, the owner
31 waives the right to contest responsibility for the violation and is subject to an additional civil
32 penalty of one hundred twenty-five dollars (\$125.00).

33 The sworn affidavit shall contain one of the following:

- 34 (1) The name and address of the person or persons who had or may have had
35 actual physical control of the vehicle at the time of the violation.
- 36 (2) A statement that at the time of the violation the vehicle was under the control
37 of a person unknown to the owner, without the owner's permission. A
38 statement provided under this subdivision shall be accompanied by
39 documentation verifying that the owner reported to appropriate law
40 enforcement officials the theft or other loss of the vehicle not later than 48
41 hours after the time of the violation.

42 (i) Notification of Criminal Charges. – If a law enforcement officer cites, pursuant to
43 G.S. 15A-302, or arrests, pursuant to G.S. 15A-401, an owner of a vehicle in an area where an
44 electronic speed-measuring system is in use for detecting violations of a speed limit set
45 pursuant to G.S. 20-141(j2) or G.S. 20-141.1, then the officer shall notify the Department of
46 Transportation within 48 hours of the citation or arrest. Upon notification, the Department shall
47 not issue a notice of violation pursuant to subsection (g) of this section. If it is determined that a
48 notice of violation was issued in error after proper notification, no penalty may be imposed
49 under this section, and any penalty already paid pursuant to the notice of violation shall be
50 refunded.

1 (j) Administrative Hearings. – The Division of Motor Vehicles shall establish an
2 administrative nonjudicial hearing process to review challenges to penalties assessed pursuant
3 to this section. The hearing shall provide a full opportunity for the person charged with the
4 violation, if that person so requests, to present evidence and contest the violation.

5 (k) Appeal. – A person dissatisfied with the decision of the Division of Motor Vehicles
6 may appeal the decision to the district court of the county in which the violation occurred by
7 filing a notice of the appeal with the clerk of superior court in the county where the violation
8 occurred within 30 days of notification of a final decision by the Division. An appeal under this
9 section is for a trial de novo before the district court. An appeal under this section is a civil
10 action, but may be heard in either a civil or criminal session of court. The Attorney General
11 shall represent the State in the appeal unless otherwise agreed upon by the Attorney General
12 and the district attorney in the county where the violation occurred. The district court's
13 determination shall be based upon a preponderance of the evidence. An appeal of the district
14 court's determination shall be to the Court of Appeals."

15 **SECTION 2.** Chapter 8 of the General Statutes is amended by adding a new
16 section to read:

17 **"§ 8-54.1. Results of electronic speed-measuring systems; admissibility.**

18 (a) Admissibility. – The results of the use of an electronic speed-measuring system
19 satisfying the requirements of subsection (b) of this section and authorized by G.S. 20-141.7
20 shall be admissible as prima facie evidence for the purpose of establishing the speed of the
21 vehicle detected.

22 (b) Calibration and Testing. – All electronic speed-measuring systems shall be
23 calibrated and tested at regular intervals pursuant to standards established by the Department of
24 Transportation. A written certificate by a certified technician meeting the standards established
25 by the Department of Transportation showing that a test was made within the required testing
26 period and that the system was accurate shall be competent and prima facie evidence of those
27 facts.

28 (c) Judicial Notice. – In every proceeding in which the results of an electronic
29 speed-measuring system are sought to be admitted for the purpose of enforcement of
30 G.S. 20-141.7, notice shall be taken of the rules approving the electronic speed-measuring
31 system and the procedures for calibration or testing for accuracy of the system."

32 **SECTION 3.** Chapter 115 of the General Statutes is amended by adding a new
33 section to read:

34 **"§ 115C-457.4. Civil Penalty Litigation Fund.**

35 There is established within the Civil Penalty and Forfeiture Fund a special fund entitled the
36 Civil Penalties Litigation Fund to be administered by the Office of State Budget and
37 Management. The Civil Penalties Litigation Fund shall include seventy-five percent (75%) of
38 civil penalties paid pursuant to G.S. 20-141.7 and any other moneys appropriated or otherwise
39 directed by the General Assembly. Moneys paid into the Civil Penalties Litigation Fund shall
40 be allocated to local school administrative units on a per pupil basis, based on the student
41 population for the current school year. The moneys in this fund shall be expended in
42 accordance with the provisions of the State School Technology Fund pursuant to
43 G.S. 115C-102.6D."

44 **SECTION 4.** Of the total amount collected in fines and penalties pursuant to this
45 act, seventy-five percent (75%) shall be paid into the Civil Penalties Litigation Fund and
46 twenty-five percent (25%) shall be paid into the State Public School Fund. The payments to the
47 Civil Penalties Litigation Fund are intended to satisfy the judgment entered on August 8, 2008,
48 in North Carolina School Boards Association, et al. v. Moore, et al., Wake County Superior
49 Court, No. 98-CVS-14158. The provisions of G.S. 115C-457.2 concerning an agency's
50 retention of the actual costs of collection of penalties and fines shall not be applicable to
51 penalties collected pursuant to this act.

1 **SECTION 5.** The funds transferred to the State Public School Fund under this act
2 shall be used exclusively for the Drivers Education Program. The Department of Public
3 Instruction shall report monthly to the Department of Transportation the amount allocated
4 under this section for the Drivers Education Program, and the Department of Transportation
5 may reduce the transfer of funds it otherwise would make to the Department of Public
6 Instruction for the Drivers Education Program pursuant to G.S. 20-88.1(c) by an equivalent
7 amount. The Department of Transportation shall use the Drivers Education Program funds that
8 otherwise would have been transferred to the Department of Public Instruction exclusively for
9 the implementation and administration of the electronic speed-measuring systems authorized
10 under this act. After consultation with the Joint Legislative Commission on Governmental
11 Operations, such funds may be used to establish positions for the administration of the
12 electronic speed-measuring systems program. Those positions may not be filled until a contract
13 has been awarded to a third-party vendor for the primary operation of the program.

14 **SECTION 6.** There is appropriated from the General Fund to the Office of State
15 Budget and Management the sum of fifty thousand dollars (\$50,000) for the 2013-2014 fiscal
16 year in nonrecurring funds. These funds shall be allocated to the Civil Penalties Litigation Fund
17 to be used for implementing the pilot program authorized by this act.

18 **SECTION 7.** For the purposes of implementing this act, the Secretary of
19 Transportation, or the Secretary's designee, may designate no more than 15 highway work
20 zones at one time, and no more than 15 school zones on State-maintained highways at one time,
21 throughout the State to pilot this program. The Secretary of Transportation, or the Secretary's
22 designee, shall ensure the designated highway work zones have a high volume of traffic and a
23 minimum of five workers scheduled to work at least 60 hours per week. An electronic
24 speed-measuring system shall not be placed in any lead-in or lead-out portion of the highway
25 work zone where workers are not engaged within one-half of one mile of the electronic
26 speed-measuring system placement.

27 **SECTION 8.** The Secretary of Transportation shall report to the Joint Legislative
28 Transportation Oversight Committee, the Joint Legislative Education Oversight Committee,
29 and the Joint Legislative Commission on Governmental Operations on the pilot program
30 authorized by this act and shall include recommendations for extension, alteration, or
31 continuance of the program. The report shall include the process and costs of purchasing
32 equipment and contracting for services necessary for implementation; the number of violations
33 detected; the number of violations appealed; the number and amount of penalties collected; the
34 amount paid into the Civil Penalties Litigation Fund; the amount paid into the State Public
35 School Fund; the effect on the number of instances of speeding in the highway work zones and
36 school zones located on State-maintained highways; the effect on the number and severity of
37 accidents in highway work zones and school zones located on State-maintained highways; the
38 cost to the Department of Transportation for operating the program; and any other matter that
39 will assist in evaluating the effectiveness of the program. The report required by this section
40 shall be made no later than May 1, 2014, and annually thereafter.

41 **SECTION 9.** This act becomes effective October 1, 2013, and applies to all civil
42 penalties assessed for speeding violations in highway work zones and school zones on
43 State-maintained highways on or after that date. This act expires October 1, 2028.