

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 115  
Committee Substitute Favorable 3/30/11  
PROPOSED COMMITTEE SUBSTITUTE H115-PCS90108-TK-8

Short Title: North Carolina Health Benefit Exchange.

(Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO PRESERVE STATE-BASED AUTHORITY TO REGULATE THE NORTH  
CAROLINA HEALTH INSURANCE MARKET AND TO PREVENT FEDERAL  
ENCROACHMENT ON STATE AUTHORITY BY ESTABLISHING THE NORTH  
CAROLINA BENEFIT EXCHANGE.

The General Assembly of North Carolina enacts:

**SECTION 1.** The purpose of this act is to provide for the establishment of the North Carolina Health Benefit Exchange Authority (Exchange Authority). The purpose of the Exchange Authority is to facilitate the purchase and sale of qualified health plans in the individual and small employer market by providing education, outreach, and technical assistance. The General Assembly believes it is in the best interest of the State, and thus the purpose of the Exchange Authority, to promote competition and choice in the health care marketplace and to facilitate innovation by offering products with variation in price and design. The Exchange Authority shall accomplish its purpose through a robust portal that provides meaningful guidance to health benefit plans that meet the needs of the health care marketplace of this State and not through the limitations of health benefit plan options to qualified individuals or qualified employers or by excluding health benefit plans who meet the premium and solvency requirements approved by the North Carolina Department of Insurance. In establishing the Exchange Authority, it is the intent of the General Assembly to reduce the number of uninsured individuals in this State, promote improved competition in the health care marketplace, and reduce health care costs by, among other things, improving reimbursements to health care providers for uncompensated care, increasing consumer education, increasing transparency, and assisting individuals and employers in accessing health coverage, premium tax credits, and cost-sharing reductions.

**SECTION 2.** Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 8. North Carolina Health Benefit Exchange Act.

**"§ 58-50-300. Definitions.**

The following definitions apply to this Part:

- (1) Agent. – Defined in G.S. 58-33-10(1).
- (2) Board. – The Board of Directors of the North Carolina Health Benefit Exchange Authority.
- (3) Broker. – Defined in G.S. 58-33-10(3).



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- 1           (4)   Commissioner. – The Commissioner of Insurance of North Carolina or the  
2           Commissioner's authorized designee.
- 3           (5)   Educated Health Care Consumer. – An individual who is knowledgeable  
4           about the health care system and has background or experience in making  
5           informed decisions regarding health, medical, and scientific matters.
- 6           (6)   Essential Health Benefits. – Defined under section 1302(b) of the Federal  
7           Act.
- 8           (7)   Exchange Authority. – The North Carolina Health Benefit Exchange  
9           Authority established pursuant to G.S. 58-50-310 and includes the Individual  
10          Exchange and the SHOP Exchange, unless otherwise specified.
- 11          (8)   Executive Director. – The individual selected by a majority vote of the  
12          Board members and hired to serve as the Executive Director of the Exchange  
13          Authority.
- 14          (9)   Federal Act. – The federal Patient Protection and Affordable Care Act  
15          (Public Law 111-148), as amended by the federal Health Care and Education  
16          Reconciliation Act of 2010 (Public Law 111-152), and as further amended,  
17          as well as any regulations or guidance issued under those acts.
- 18          (10) Grandfathered Health Plan Coverage or Grandfathered Health Plan. –  
19          Defined in 45 C.F.R. Part 147.140(a).
- 20          (11) Health Benefit Plan. – Defined in G.S. 58-3-167(a)(1).
- 21          (12) Health Care Provider. – Defined in G.S. 58-50-270(3a).
- 22          (13) Health Insurer or Insurer. – Defined in G.S. 58-68-25(a)(6) and, for the  
23          purposes of this act, the terms also include qualified nonprofit health  
24          insurance issuers (CO-OP Insurers) as provided in section 1322 of the  
25          Federal Act, and multistate Qualified Health Plans as provided in section  
26          1334 of the Federal Act.
- 27          (14) Individual Exchange. – The Exchange through which Qualified Individuals  
28          may purchase coverage established pursuant to this Part.
- 29          (15) Navigator. – An individual who either is an employee of or has been  
30          licensed by the North Carolina Department of Insurance Consumer  
31          Assistance Program in accordance with the standards set forth by the  
32          Secretary, as provided in section 1311(i) of the Federal Act; and  
33          G.S. 58-50-340(18).
- 34          (16) Plan of Operation. – The articles, bylaws, and operating rules and procedures  
35          adopted by the Board in accordance with this Part.
- 36          (17) Qualified Dental Plan. – A limited scope dental plan that has been certified  
37          in accordance with G.S. 58-50-350.
- 38          (18) Qualified Employer. – A Small Employer that elects to make its full-time  
39          employees eligible for one or more Qualified Health Plans offered through  
40          the SHOP Exchange, and at the option of the employer, some or all of its  
41          part-time employees.
- 42          (19) Qualified Health Plan. – A Health Benefit Plan that has in effect a  
43          certification that the plan meets the criteria for certification described in  
44          section 1311(c) of the Federal Act and G.S. 58-50-350.
- 45          (20) Qualified Individual. – An individual, including a minor, who meets all of  
46          the following requirements:
- 47               a.   Is seeking to enroll in a Qualified Health Plan offered to individuals  
48               through the Individual Exchange.
- 49               b.   Resides in this State pursuant to G.S. 58-50-175(18).
- 50               c.   At the time of enrollment, is not incarcerated, other than  
51               incarceration pending the disposition of charges.

1           d.     Is, and is reasonably expected to be, for the entire period for which  
2                 enrollment is sought, a citizen or national of the United States or an  
3                 alien lawfully present in the United States.

4           (21) Secretary. – The Secretary of the federal Department of Health and Human  
5                 Services.

6           (22) SHOP Exchange. – The Small Business Health Options Program established  
7                 in G.S. 58-50-34(13) that is designed to assist Qualified Employers in the  
8                 State who are Small Employers in facilitating the enrollment of their  
9                 employees in Qualified Health Plans offered in the small group market in the  
10                State.

11          (23) Small Employer. – An employer as such term is defined in  
12                 G.S. 58-50-110(22), subject to the requirements of the Federal Act and the  
13                 Public Health Service Act (PHSA).

14    **"§ 58-50-310. Exchange established; Board of Directors; Plan of Operation.**

15          (a) There is hereby created a nonprofit entity to be known as the North Carolina Health  
16                 Benefit Exchange Authority, which is subject to the supervision of the Commissioner.  
17                 Notwithstanding that the Exchange Authority may be supported in whole or in part from State  
18                 or federal funds, the Exchange Authority is not an instrumentality of the State or federal  
19                 government and shall be operated by the Board. The purpose of the Exchange Authority is to  
20                 do the following:

21                 (1) Create and administer an Individual Exchange and a SHOP Exchange which  
22                         shall be operated as two separate health benefit exchanges and shall not be  
23                         operated as one health benefit exchange.

24                 (2) Facilitate the purchase and sale of Qualified Health Plans to Qualified  
25                         Individuals and Qualified Employers.

26                 (3) Assist Qualified Individuals in enrollment in Qualified Health Plans and  
27                         assist Qualified Employers in facilitating the enrollment of their employees  
28                         in Qualified Health Plans.

29          (b) There is established the North Carolina Health Benefit Exchange Authority Board.  
30                 The Board shall have the duties and powers as established by this section.

31                 (1) The North Carolina Health Benefit Exchange Authority Board shall consist  
32                         of the Commissioner of Insurance, who shall serve as an ex officio  
33                         nonvoting member, the Director of the Division of Medical Assistance, who  
34                         shall serve as ex officio member and shall only vote in the case of a tie, and  
35                         12 additional members appointed as follows:

36                         a. Four members appointed by the General Assembly, upon the  
37                                 recommendation of the President Pro Tempore of the Senate, as  
38                                 follows:

39   1. One member who represents the medical provider  
40   community, as recommended by the North Carolina Medical  
41   Society.

42   2. One member who represents an insurer, and is not a licensed  
43   health insurance agent, as recommended by the North  
44   Carolina Association of Health Plans.

45   3. One member who represents business, who is not employed  
46   by or affiliated with an insurance company or plan, group  
47   hospital, or other Health Care Provider, as recommended by  
48   the North Carolina Chamber.

49   4. One member who has experience and expertise as a licensed  
50   health insurance agent in the State of North Carolina, as  
51   recommended by the North Carolina Association of Health

- 1 Underwriters, the National Association of Insurance and  
2 Financial Advisors – North Carolina, and the Independent  
3 Insurance Agents of North Carolina.
- 4 b. Four members appointed by the General Assembly, upon the  
5 recommendation of the Speaker of the House of Representatives, as  
6 follows:
- 7 1. One member who represents the nursing provider community,  
8 as recommended by the North Carolina Hospital Association.
- 9 2. One member who represents the insurance industry and is not  
10 a licensed health insurance agent.
- 11 3. One member who represents small business, who is not  
12 employed by or affiliated with an insurance company or plan,  
13 group hospital, or other Health Care Provider, as  
14 recommended by the National Federation of Independent  
15 Business.
- 16 4. One member who represents the general public who is not  
17 employed by or affiliated with an insurance company or plan,  
18 group hospital, or other Health Care Provider and shall  
19 reasonably be expected to qualify for coverage in the  
20 Individual Exchange or SHOP Exchange. Members of the  
21 general public include individuals whose only affiliation with  
22 health insurance or health care coverage is as a covered  
23 member.
- 24 c. Four members appointed by the Governor, who do not represent the  
25 categories listed in sub-subdivision a. and sub-subdivision b. of this  
26 subdivision, as follows:
- 27 1. One member, who is not employed by or affiliated with an  
28 insurance company or plan, group hospital, or other Health  
29 Care Provider, who has expertise and experience in the  
30 development and operation of State-scale information  
31 technology systems capable of conducting electronic funds  
32 transfers, secure data transfers, and other electronic functions  
33 relating to the creation and ongoing operations of the  
34 Exchange Authority.
- 35 2. One member, who is not employed by or affiliated with an  
36 insurance company or plan, group hospital, or other Health  
37 Care Provider, who has expertise and experience in rural  
38 health policy, rural health economics, or rural health care  
39 finance as recommended by the North Carolina Rural  
40 Economic Development Center.
- 41 3. One member who represents the general public who is not  
42 employed by or affiliated with an insurance company or plan,  
43 group hospital, or other Health Care Provider and shall  
44 reasonably be expected to qualify for coverage in the  
45 Individual Exchange or SHOP Exchange. Members of the  
46 general public include individuals whose only affiliation with  
47 health insurance or health care coverage is as a covered  
48 member.
- 49 4. One member who has experience and expertise in one or  
50 more of the subject area groupings: health economics or  
51 health care finance; actuarial science or risk management;

- 1 health policy analysis or health law; or as a health insurance  
2 agent.
- 3 (2) The initial appointments by the General Assembly upon the recommendation  
4 of the Speaker of the House of Representatives and the President Pro  
5 Tempore of the Senate shall be made no later than 30 days after enactment  
6 of this Part and shall serve a term of three years. The initial appointments by  
7 the Governor shall be made no later than 30 days after enactment of this Part  
8 and shall be for a term of two years. All succeeding appointments shall be  
9 for terms of three years. Members shall not serve for more than two  
10 successive terms. A Board member's term shall continue until the member's  
11 successor is appointed by the original appointing authority. Vacancies shall  
12 be filled by the appointing authority for the unexpired portion of the term in  
13 which they occur. A Board member may be removed by the member's  
14 appointing authority or by the Commissioner for cause. The Board shall  
15 meet at least quarterly upon the call of the chair. A majority of the total  
16 membership of the Commission shall constitute a quorum. The  
17 Commissioner shall appoint a chair to serve for the initial two years of the  
18 Exchange Authority's operation. Subsequent chairs shall be elected by a  
19 majority vote of the Board members and shall serve for two-year terms.  
20 Board members shall receive travel allowances under G.S. 138-5 when  
21 traveling to and from meetings of the Board but shall not receive any  
22 subsistence allowance or per diem under subdivision (a)(1) of that section.
- 23 (3) The Board shall employ or fix compensation of the Executive Director. The  
24 annual salary for the Executive Director shall not exceed one hundred fifty  
25 percent (150%) of the annual salary for members of the Council of State.
- 26 (4) The Board shall appoint appropriate legal, actuarial, and other persons,  
27 entities, or committees as necessary to provide technical assistance in the  
28 operation, policy, contractual design, and other functions of the Exchange  
29 Authority.
- 30 (5) The Board shall adopt bylaws, policies, and procedures as may be necessary  
31 or convenient.
- 32 (6) Each member of the Board shall comply with the conflict of interest rules  
33 and recusal procedures set forth in the Plan of Operation.
- 34 (7) No member of the Board or staff shall make, participate in making, or in any  
35 way attempt to use his or her official position to influence the making of any  
36 decision that he or she knows or has reason to know will have a reasonably  
37 foreseeable material financial effect, distinguishable from its effect on the  
38 public generally or on all members of a profession, occupation, industry, or  
39 general class, on him or her or a member of his or her immediate family, or  
40 which will have a reasonably foreseeable material effect on any business  
41 entity in which the member or his or her immediate family member is a  
42 director, officer, partner, trustee, employee, or holds any position of  
43 management.
- 44 (8) Each member of the Board shall have the responsibility and duty to meet the  
45 requirements of this Part, the Federal Act, and all applicable State and  
46 federal laws, rules, and regulations to serve the public interest of the  
47 individuals and employers seeking health care coverage through the  
48 Exchange Authority, and to ensure the operational well-being and fiscal  
49 solvency of the Exchange Authority.
- 50 (c) The Board shall submit to the Commissioner a Plan of Operation for the Exchange  
51 Authority and any amendments.

- 1           (1)   The Commissioner shall review and approve or disapprove the Plan of  
2           Operation within 90 days after its submission or resubmission. If the  
3           Commissioner fails to act within 90 days of submission, the Plan of  
4           Operation shall be deemed approved. If the Commissioner disapproves any  
5           part of the Plan of Operation, the Commissioner shall provide specific  
6           reasons for the disapproval and provide the Board an opportunity to revise  
7           and resubmit the Plan of Operation. The Plan of Operation shall become  
8           effective upon approval in writing by the Commissioner. If the Board fails to  
9           submit a Plan of Operation within 180 days after the appointment of the  
10           Board that is approved by the Commissioner, or at any time thereafter fails  
11           to submit amendments as required by statute or federal law to the Plan of  
12           Operation, the Commissioner shall adopt temporary rules necessary to  
13           effectuate the provisions of this section. The rules shall continue in force  
14           until modified by the Commissioner or superseded by a Plan of Operation  
15           submitted by the Board and approved by the Commissioner.
- 16           (2)   The Plan of Operation shall establish policies and procedures for operation  
17           of the Exchange Authority, including, but not limited to, the following:
- 18           a.     Process by which the Board sets policies and conducts business,  
19           including bylaws.
- 20           b.     Process for certifying Qualified Health Plans.
- 21           c.     Plans for determining the need for and selection of eligible entities  
22           with whom to contract for performance of Exchange Authority  
23           functions or operations.
- 24           d.     Fiscal operations of the Exchange Authority, addressing the  
25           collection, handling, disbursing, accounting, and auditing of assets  
26           and monies of the Exchange Authority and any eligible entity with  
27           whom the Exchange Authority contracts.
- 28           e.     Statement acknowledging the fiduciary duty owed by the Exchange  
29           Authority to persons receiving Qualified Health Plan coverage  
30           through the Exchange Authority.
- 31           f.     Process for evaluating the effectiveness of the Executive Director  
32           and the overall operations of the Exchange Authority.
- 33           g.     Provide for conflict of interest rules and recusal procedures that  
34           require a Board member to recuse himself or herself from an official  
35           matter whenever that matter will have a reasonably foreseeable  
36           material effect, distinguishable from its effect on the public generally  
37           or on all members of a profession, occupation, industry, or general  
38           class, on any Board member, or his or her immediate family member  
39           or on any business entity in which the member or his or her  
40           immediate family member is a director, officer, partner, trustee,  
41           employee, or holds any position of management.
- 42           h.     Identify an approach for coordinating efforts with the Department of  
43           Health and Human Services to fairly allocate administrative costs for  
44           eligibility determinations in the Exchange Authority and Medicaid.
- 45           i.     Provide for other matters as may be necessary or proper for the  
46           execution of the Executive Director's powers, duties, and obligations  
47           under this act.
- 48           j.     Appeals processes authorized by this Part, including appeals of tax  
49           credit eligibility, cost-sharing subsidy, mandate waiver  
50           determination, affordability determinations pursuant to

1 G.S. 58-50-340 and appeals of Insurer noncertification or  
2 decertification pursuant to G.S. 58-50-350.

3 **"§ 58-50-320. Exchange Authority general powers.**

4 (a) The Exchange Authority shall have the general powers and authority granted under  
5 the laws of this State and the specific authority to do all of the following:

6 (1) Contract with an eligible entity for any of its functions described in this act.  
7 For the purposes of this act, an eligible entity has the same meaning as  
8 section 1311(f)(3)(B) of the Federal Act.

9 (2) Take legal action as necessary.

10 (3) Enter into information-sharing agreements with federal and State agencies  
11 and other state exchanges to carry out its responsibilities under this act,  
12 provided such agreements include adequate protections with respect to the  
13 confidentiality of the information to be shared and comply with all State and  
14 federal laws and regulations.

15 **"§ 58-50-330. General requirements.**

16 (a) The Exchange Authority shall make Qualified Health Plans available to Qualified  
17 Individuals and Qualified Employers beginning with effective dates on or after January 1,  
18 2014.

19 (b) The Exchange Authority shall not make available any Health Benefit Plan that is not  
20 a Qualified Health Plan. The Exchange Authority shall allow a Health Insurer to offer a plan  
21 that provides limited scope dental benefits meeting the requirements of section 9832(c)(2)(A)  
22 of the Internal Revenue Code of 1986 through the Exchange Authority, either separately or in  
23 conjunction with a Qualified Health Plan, if the plan provides pediatric dental benefits meeting  
24 the requirements of section 1302(b)(1)(J) of the Federal Act.

25 (c) The Exchange Authority, or any Insurer offering Qualified Health Plans through the  
26 Exchange Authority, shall not impose any penalty or other fee on an individual who cancels  
27 enrollment in a plan because the individual becomes eligible for minimum essential coverage  
28 (as defined in section 5000A(f) of the Internal Revenue Code of 1986 without regard to  
29 paragraph (1)(C) or (D) thereof) or such coverage has become affordable within the meaning of  
30 section 36B(c)(2)(C) of the Internal Revenue Code of 1986.

31 (d) The Exchange Authority may make a Qualified Health Plan available  
32 notwithstanding any provision of law that may require benefits other than the Essential Health  
33 Benefits specified under section 1302(b) of the Federal Act.

34 (1) Nothing in this section shall preclude a Qualified Health Plan from including  
35 benefits in addition to Essential Health Benefits, including wellness  
36 programs.

37 (2) To the extent that State law or regulation requires that a Qualified Health  
38 Plan include benefits in addition to the Essential Health Benefits, the State  
39 shall make payments to defray the cost of any additional benefits directly to  
40 an individual enrolled in a Qualified Health Plan or on behalf of an  
41 individual directly to the Health Insurer in whose Qualified Health Plan such  
42 individual is enrolled.

43 (3) To the extent that funding to defray the cost for such additional benefits is  
44 not provided, notwithstanding any requirements in Chapter 58 of the General  
45 Statutes, a Health Insurer is not required to include such additional benefits  
46 in a Qualified Health Plan, may discontinue such benefits at the time such  
47 funding is no longer available, and shall provide written or electronic notice  
48 of discontinuation of such benefits to insureds and contracted Health Care  
49 Providers as soon as is reasonably practicable. The Exchange Authority shall  
50 not require that a Qualified Health Plan provide such additional benefits  
51 when funding to defray the cost for such additional benefits is not provided.

1       (e) Nothing in this Part, and no action taken by the Exchange Authority pursuant to this  
2 Part, shall be construed to conflict with, preempt, limit, or supersede any applicable health  
3 insurance laws of this State or regulations adopted and orders issued by the Commissioner.  
4 Nothing in this Part shall be construed to conflict with, limit, or supersede the statutory or  
5 regulatory authority vested with the North Carolina Department of Insurance. Except as  
6 expressly provided to the contrary by federal law, Insurers and any other entities or persons  
7 participating in the Exchange Authority in this State shall comply fully with all applicable  
8 provisions of Chapter 58 of the General Statutes and all related regulations adopted and orders  
9 issued by the Commissioner. Participation in the Exchange Authority in any way, including  
10 payment or receipt of payment in relation to a Qualified Health Benefits Plan, does not exempt  
11 any Insurer, entity, or person from complying fully with Chapter 58 of the General Statutes and  
12 all related regulations adopted and orders issued by the Commissioner.

13       (f) The Executive Director shall make an annual report to the Governor, Speaker of the  
14 House of Representatives, the President Pro Tempore of the Senate, and the Commissioner by  
15 March 1 of each year. The report shall summarize the activities of the Exchange Authority in  
16 the preceding calendar year, including information about the number and types of plans  
17 offered; number of Insurers; summary information about premiums, enrollment levels and  
18 enrollment/disenrollment activity, and duration of coverage; and cost of operating the  
19 Exchange Authority.

20       (g) Neither the Board nor the employees of the Exchange Authority are liable for any  
21 obligations of the Exchange Authority. There shall be no liability on the part of, and no cause  
22 of action of any nature shall arise against, the Exchange Authority or its agents or employees,  
23 the Board, the Executive Director, or the Commissioner or the Commissioner's representatives  
24 for any action taken by them in good faith in the performance of their powers and duties under  
25 this Part.

26       (h) The Exchange Authority, including the Board and its employees, is subject to the  
27 provisions of Article 33C of Chapter 143 of the General Statutes.

28       (i) The Executive Director, with the approval of the Board, shall operate the Exchange  
29 Authority in a manner so that the estimated cost of operating the Exchange Authority during  
30 any calendar year is not anticipated to exceed the total income the Exchange Authority expects  
31 to receive from any revenue available to the Exchange Authority.

32       (j) The Board shall provide for other matters as may be necessary and proper for the  
33 execution of the Executive Director's powers, duties, and obligations under this Part.

34       (k) All documents, papers, letters, maps, books, photographs, films, sound recordings,  
35 magnetic or other tapes, electronic data-processing records, artifacts, or other documentary  
36 material, regardless of physical form or characteristics within the possession of the Exchange  
37 Authority, including its employees and the Board, are subject to the provisions of Chapter 132  
38 of the General Statutes except to the extent that these public records are protected under State  
39 or federal law, or are confidential or proprietary property of a person as defined in G.S. 66-152.

40       (l) The members of the Board and the Executive Director are public servants under  
41 G.S. 138A-3(30) and are subject to the provisions of Chapter 138A of the General Statutes.

42 **"§ 58-50-340. General duties.**

43 The Exchange Authority shall do the following:

- 44       (1) Facilitate the purchase and sale of Qualified Health Plans.
- 45       (2) Assist qualified individuals in this State with enrollment in Qualified Health  
46 Plans.
- 47       (3) Assist qualified employers in this State with enrollment of their employees  
48 in Qualified Health Plans.
- 49       (4) Implement procedures for the certification, recertification, and  
50 decertification, consistent with guidelines developed by the Secretary under



- 1 section 1311(c) of the Federal Act and this Part, of health benefit plans as  
2 Qualified Health Plans.
- 3 (5) Provide for the operation of a toll-free telephone hotline to respond to  
4 requests for assistance in a manner that is accessible to individuals with  
5 different communication needs and that effectively communicates  
6 information in a manner that is appropriate to the needs of the population  
7 being served by the Exchange Authority.
- 8 (6) Provide for enrollment periods, as provided under section 1311(c)(6) of the  
9 Federal Act.
- 10 (7) Maintain an Internet Web site through which enrollees and prospective  
11 enrollees of Qualified Health Plans and individuals eligible for Medicaid or  
12 North Carolina Health Choice may obtain standardized comparative  
13 information on such plans.
- 14 (8) Assign a rating to each Qualified Health Plan offered through the Exchange  
15 Authority in accordance with the criteria developed by the Secretary under  
16 section 1311(c)(3) of the Federal Act and determine each Qualified Health  
17 Plan's level of coverage in accordance with regulations issued by the  
18 Secretary under section 1302(d)(2)(A) of the Federal Act.
- 19 (9) Use a standardized format for presenting health benefit options in the  
20 Exchange Authority, including the use of the uniform outline of coverage  
21 established under section 2715 of the PHSA that supports consumer choice  
22 by making comprehensive information about health plans available in an  
23 objective, easy-to-understand format.
- 24 (10) In accordance with section 1413 of the Federal Act, inform individuals of  
25 eligibility requirements for the Medicaid program under Title XIX of the  
26 Social Security Act, the Children's Health Insurance Program (CHIP) under  
27 Title XXI of the Social Security Act, or any applicable State or local public  
28 program and if, through screening of the application by the Exchange  
29 Authority, the Exchange Authority determines that any individual is eligible  
30 for any such program, enroll that individual in that program.
- 31 (11) Establish and make available by electronic means a calculator to determine  
32 the actual cost of coverage after application of any premium tax credit under  
33 section 36B of the Internal Revenue Code of 1986 and any cost-sharing  
34 reduction under section 1402 of the Federal Act.
- 35 (12) Establish an Individual Exchange, through which Qualified Individuals may  
36 enroll in any qualified plan offered through the Individual Exchange for  
37 which they are eligible.
- 38 (13) Establish a SHOP Exchange through which Qualified Employers may make  
39 its employees eligible for one or more Qualified Health Plans offered  
40 through the SHOP Exchange or through which Qualified Employers may  
41 specify a level of coverage so that any of its employees may enroll in any  
42 Qualified Health Plan offered through the SHOP Exchange at the specified  
43 level of coverage.
- 44 (14) Subject to section 1411 of the Federal Act, grant a certification attesting that,  
45 for purposes of the individual responsibility penalty under section 5000A of  
46 the Internal Revenue Code of 1986, an individual is exempt from the  
47 individual responsibility requirement or from the penalty imposed by that  
48 section because of either of the following:
- 49 a. There is no affordable Qualified Health Plan available through the  
50 Exchange Authority, or the individual's employer, covering the  
51 individual.

- 1                    b. The individual meets the requirements for any other such exemption  
2                    from the individual responsibility requirement or penalty.
- 3            (15) Transfer to the federal Secretary of the Treasury the following:
- 4                    a. A list of the individuals who are issued a certification under  
5                    subdivision (14) of this subsection, including the name and taxpayer  
6                    identification number of each individual.
- 7                    b. The name and taxpayer identification number of each individual who  
8                    was an employee of an employer but who was determined to be  
9                    eligible for the premium tax credit under section 36B of the Internal  
10                   Revenue Code of 1986 because of either of the following:
- 11                    1. The employer did not provide minimum essential coverage.  
12                    2. The employer provided the minimum essential coverage, but  
13                    it was determined under section 36B(c)(2)(C) of the Internal  
14                    Revenue Code of 1986 to either be unaffordable to the  
15                    employee or not provide the required minimum actuarial  
16                    value.
- 17                    c. The name and taxpayer identification number of the following:
- 18                    1. Each individual who notifies the Exchange Authority under  
19                    section 1411(b)(4) of the Federal Act that he or she has  
20                    changed employers.
- 21                    2. Each individual who ceases coverage under a Qualified  
22                    Health Plan during a plan year and the effective date of that  
23                    cessation.
- 24            (16) Provide to each employer the name of each employee of the employer  
25                    described in sub-sub-subdivision b.2. of subdivision (15) of this subsection  
26                    who ceases coverage under a Qualified Health Plan during a plan year and  
27                    the effective date of the cessation.
- 28            (17) Perform duties required of the Exchange Authority by the Secretary or the  
29                    Secretary of the Treasury related to determining eligibility for premium tax  
30                    credits, reduced cost sharing, or individual responsibility requirement  
31                    exemptions.
- 32            (18) Select Navigators and award grants to enable Navigators to do the following:
- 33                    a. Conduct public education activities to raise awareness of the  
34                    availability of Qualified Health Plans.
- 35                    b. Distribute fair and impartial information concerning enrollment in  
36                    Qualified Health Plans and the availability of premium tax credits  
37                    under section 36B of the Internal Revenue Code of 1986 and  
38                    cost-sharing reductions under section 1402 of the Federal Act.
- 39                    c. Facilitate enrollment in Qualified Health Plans.
- 40                    d. Provide referrals to any applicable office of health insurance  
41                    consumer assistance or health insurance ombudsman established  
42                    under section 2793 of the PHSA, or any other appropriate State  
43                    agency or agencies, for any enrollee with a grievance, complaint, or  
44                    question regarding their Health Benefit Plan, coverage, or a  
45                    determination under that plan or coverage.
- 46                    e. Provide information in a manner that is culturally and linguistically  
47                    appropriate to the needs of the population being served by the  
48                    Exchange Authority.
- 49            (19) Take into account any excess of premium growth outside of the Exchange  
50                    Authority as compared to the rate of such growth inside the Exchange  
51                    Authority when determining under section 1302(f)(2)(B) of the Federal Act

- 1                    whether to recommend to the General Assembly that Qualified Health Plans  
2                    be offered in the large group market through the SHOP Exchange.  
3                    (20) Consult with stakeholders relevant to carrying out the activities required  
4                    under this act, including, but not limited to, the following:  
5                    a.     Educated health care consumers who are enrollees in Qualified  
6                    Health Plans.  
7                    b.     Individuals and entities with experience in facilitating enrollment in  
8                    Qualified Health Plans.  
9                    c.     Representatives of small businesses and self-employed individuals.  
10                    d.     Representatives of Health Insurers that offer Qualified Health Plans  
11                    through the Exchange Authority.  
12                    e.     Representatives of Health Insurers that are not offering qualified  
13                    plans through the Exchange Authority.  
14                    f.     Representatives of Health Care Providers.  
15                    g.     The Division of Medical Assistance.  
16                    h.     The North Carolina Department of Insurance.  
17                    i.     Advocates for enrolling hard to reach populations.  
18                    (21) Meet all of the following financial integrity requirements:  
19                    a.     Keep an accurate accounting of all activities, receipts, and  
20                    expenditures and annually submit to the Secretary, the Governor, the  
21                    Commissioner, and the General Assembly a report concerning such  
22                    accountings.  
23                    b.     Fully cooperate with any investigation conducted by the Secretary  
24                    pursuant to the Secretary's authority under the Federal Act and allow  
25                    the Secretary, in coordination with the Inspector General of the U.S.  
26                    Department of Health and Human Services, to do all of the  
27                    following:  
28                    1.     Investigate the affairs of the Exchange Authority.  
29                    2.     Examine the properties and records of the Exchange  
30                    Authority.  
31                    3.     Require periodic reports in relation to the activities  
32                    undertaken by the Exchange Authority.  
33                    c.     In carrying out its activities under this act, not use any funds intended  
34                    for the administrative and operational expenses of the Exchange  
35                    Authority for staff retreats, promotional giveaways, excessive  
36                    executive compensation, or promotion of federal or State legislative  
37                    and regulatory modifications.  
38                    (22) Meet the following fiduciary duties and liability:  
39                    a.     Any person who acts on behalf of an Exchange Authority shall act as  
40                    a fiduciary. Such person shall ensure that the Exchange Authority is  
41                    operated (i) solely in the interests of individuals participating in  
42                    qualified health plans offered through the Exchange Authority and  
43                    (ii) for the exclusive purpose of facilitating the purchase of Qualified  
44                    Health Plans.  
45                    b.     Any person who acts as a fiduciary on behalf of the Exchange  
46                    Authority who breaches any of their responsibilities, obligations, or  
47                    duties imposed by this section shall be liable to make good to the  
48                    Exchange Authority, the Qualified Health Plans offered through the  
49                    Exchange Authority, or participants of Qualified Health Plans  
50                    offered through the Exchange Authority any losses resulting from  
51                    each breach and shall be subject to such other legal or equitable relief

1 as the court may deem appropriate, including removal of such  
2 fiduciary.

3 (23) With respect to eligibility determinations, provide for (i) review of enrollee  
4 appeals of Exchange Authority premium tax credit and cost-sharing  
5 reductions and mandate exemption determinations and establish procedures  
6 for identifying and confirming income levels of applicants for Exchange  
7 Authority coverage and eligibility for receipt of premiums and tax credits  
8 and (ii) employer appeals of employer-sponsored plan availability or  
9 affordability determinations.

10 (24) Conduct a review of the costs and benefits of collecting and distributing  
11 premiums for small businesses. No later than January 1, 2015, the Exchange  
12 Authority shall report the results of the review, including analysis of the  
13 financial impact of such collection and distribution, and its recommendations  
14 to the North Carolina General Assembly. The Exchange Authority may  
15 implement and carry out a process for collecting and distributing premiums  
16 if it has sufficient funding to implement the initiative and upon approval by  
17 vote by both chambers of the North Carolina General Assembly.

18 (25) In conjunction with North Carolina Department of Health and Human  
19 Services, study the feasibility of offering a Basic Health Plan pursuant to  
20 section 1331 of the Federal Act and make a recommendation to the 2013  
21 Regular Session of the 2013 General Assembly.

22 (26) Provide for publicity and outreach campaigns to raise awareness of the  
23 existence of the Exchange Authority and disseminate information regarding  
24 eligibility criteria, enrollment procedures, availability of premium tax credits  
25 and cost-sharing reductions, small employer tax credits, and other relevant  
26 information.

27 (27) Consider the extent to and the circumstances under which benefits for  
28 spiritual care services that are deductible under section 213(d) of the Internal  
29 Revenue Code of 1986 as of January 1, 2011, will be made available under  
30 the Exchange Authority in accordance with section 1311(d)(3)(B) of the  
31 Affordable Care Act.

32 **"§ 58-50-350. Health Benefit Plan certification.**

33 (a) The Exchange Authority shall certify a Health Benefit Plan as a Qualified Health  
34 Plan if the Department of Insurance determines that it satisfies the requirements set forth in  
35 subdivisions (1) through (6) of this subsection unless the Exchange Authority determines that  
36 making the plan available through the Exchange Authority is not in the interest of Qualified  
37 Individuals and Qualified Employers in this State.

38 (1) The plan provides the Essential Health Benefits package described in section  
39 1302(a) of the Federal Act, except that the plan is not required to provide  
40 essential benefits that duplicate the minimum benefits of Qualified Dental  
41 Plans, as provided in subsection (e) of this section, if both of the following  
42 occur:

43 a. The Exchange Authority has determined that at least one Qualified  
44 Dental Plan is available to supplement the plan's coverage.

45 b. The Insurer makes prominent disclosure at the time it offers the plan,  
46 in a form approved by the Exchange Authority, that the plan does not  
47 provide the full range of essential pediatric benefits, and that  
48 Qualified Dental Plans providing those benefits and other dental  
49 benefits not covered by the plan are offered through the Exchange  
50 Authority.

- 1           (2)    The premium rates and insurance policy forms, certifications, applications  
2           and riders have been approved by the Commissioner.
- 3           (3)    The plan provides at least a bronze level of coverage, unless the plan is  
4           certified as a qualified catastrophic plan, meets the requirements of section  
5           1302(e) of the Federal Act for catastrophic plans, and will only be offered to  
6           individuals eligible for catastrophic coverage.
- 7           (4)    The plan's cost-sharing requirements do not exceed the limits established  
8           under section 1302(c)(1) of the Federal Act and, if the plan is offered  
9           through the SHOP Exchange, the plan's deductible does not exceed the limits  
10          established under section 1302(c)(2) of the Federal Act.
- 11          (5)    The Health Insurer offering the plan meets the following requirements:
- 12           a.    Is licensed and in good standing to offer health insurance coverage in  
13           this State.
- 14           b.    Offers at least one Qualified Health Plan in the silver level and at  
15           least one plan in the gold level through each component of the  
16           Exchange Authority in which the Insurer participates, where  
17           "component" refers to the SHOP Exchange and the Individual  
18           Exchange.
- 19           c.    Charges the same premium rate for each qualified health plan  
20           without regard to whether the plan is offered through the Exchange  
21           Authority and without regard to whether the plan is offered directly  
22           from the Insurer or through an insurance producer.
- 23           d.    Does not charge any cancellation fees or penalties in violation of  
24           G.S. 58-50-330(c).
- 25           e.    Complies with the regulations developed by the Secretary under  
26           section 1311(d) of the Federal Act and such other requirements as the  
27           Exchange Authority may establish.
- 28          (6)    The plan meets the requirements of certification as promulgated by  
29          regulation pursuant to this section and by the Secretary under section  
30          1311(c) of the Federal Act.
- 31          (b)    The Exchange Authority shall not exclude a health plan through the imposition of  
32          premium price controls, nor shall it exclude a health plan based on the following:
- 33           (1)    That the plan is a fee-for-service plan.
- 34           (2)    That the Health Benefit Plan provides treatments necessary to prevent  
35           patients' deaths in circumstances the Exchange Authority determines are  
36           inappropriate or too costly.
- 37          (c)    The Exchange Authority shall require each Health Insurer seeking certification of a  
38          plan as a Qualified Health Plan to do the following:
- 39           (1)    Submit a justification for any premium increase before implementation of  
40           that increase. The Insurer shall prominently post such information on its  
41           Internet Web site. The Exchange Authority shall take this information, along  
42           with the information and the recommendations provided to the Exchange  
43           Authority by the Commissioner under section 2794(b) of the PHSA, relating  
44           to patterns or practices of excessive or unjustified premium increases, into  
45           consideration when determining whether to continue to allow the Insurer to  
46           make plans available through the Exchange Authority. In no case shall an  
47           Exchange Authority impose any premium price controls or restrict premiums  
48           that otherwise meet the requirements of State law.
- 49           (2)    Make available to the public and submit to the Exchange Authority, the  
50           Secretary, and the Commissioner, accurate and timely disclosure of the  
51           following:

- 1           a.     Claims payment policies and practices.  
2           b.     Periodic financial disclosures.  
3           c.     Data on enrollment.  
4           d.     Data on disenrollment.  
5           e.     Data on the number of claims that are denied.  
6           f.     Data on rating practices.  
7           g.     Information on cost sharing and payments with respect to any  
8                 out-of-network coverage.  
9           h.     Information on enrollee and participant rights under Title I of the  
10                 Federal Act.  
11           i.     Other information as determined appropriate by the Secretary.  
12           The information shall be provided in plain language, as that term is defined  
13           in section 1311(e)(3)(B) of the Federal Act.  
14         (3)    Permit individuals to learn, in a timely manner upon the request of the  
15                 individual, the amount of cost sharing, including deductibles, co-payments,  
16                 and coinsurance, under the individual's plan or coverage that the individual  
17                 would be responsible for paying with respect to the furnishing of a specific  
18                 item or service by a participating provider. At a minimum, this information  
19                 shall be made available to the individual through an Internet Web site and  
20                 through other means for individuals without access to the Internet.  
21         (d)    The Exchange Authority shall establish and publish a transparent, objective process  
22                 for denying certification or decertifying Qualified Health Plans.  
23           (1)    The Exchange Authority shall give each Health Insurer the opportunity to  
24                 appeal a decertification decision or the denial of certification as a Qualified  
25                 Health Plan.  
26           (2)    The Exchange Authority shall give each Health Insurer that appeals a  
27                 decertification decision or the denial of certification the opportunity for the  
28                 following:  
29                 a.     The submission and consideration of facts, arguments, or proposals  
30                         of adjustment of the health plan or plans at issue.  
31                 b.     A hearing and a decision on the record, to the extent that the  
32                         Exchange Authority and the Health Insurer are unable to reach  
33                         agreement following the submission of the information in  
34                         sub-subdivision a. of this subdivision.  
35           (3)    Any hearing held pursuant to subdivision (2) of this subsection shall be  
36                 conducted by an impartial party agreed to by the Exchange Authority and the  
37                 Health Insurer. If the Exchange Authority and the Health Insurer cannot  
38                 agree on an impartial party, then the hearing must be held by an  
39                 administrative law judge.  
40           (4)    The hearing decision may be appealed to the North Carolina Court of  
41                 Appeals by the aggrieved party.  
42         (e)    The Exchange Authority shall not exempt any Health Insurer seeking certification  
43                 of a Qualified Health Plan, regardless of the type or size of the Insurer, from State licensure or  
44                 solvency requirements and shall apply the criteria of this section in a manner that assures a  
45                 level playing field between or among Health Insurers participating in the Exchange Authority.  
46           (1)    The provisions of this act that are applicable to Qualified Health Plans shall  
47                 also apply to the extent relevant to qualified dental plans except as modified  
48                 in accordance with the provisions of subdivisions (2), (3), and (4) of this  
49                 subsection or by regulations adopted by the Commissioner.  
50           (2)    The Insurer shall be licensed to offer dental coverage but need not be  
51                 licensed to offer other health benefits.

1           (3)    The plan shall be limited to dental and oral health benefits, without  
2           substantially duplicating the benefits typically offered by Health Benefit  
3           Plans without dental coverage and shall include, at a minimum, the essential  
4           pediatric dental benefits prescribed by the Secretary pursuant to section  
5           1302(b)(1)(J) of the Federal Act and such other dental benefits as the  
6           Exchange Authority or the Secretary may specify by regulation.

7           (4)    Insurers may jointly offer a comprehensive plan through the Exchange  
8           Authority in which the dental benefits are provided by an Insurer through a  
9           Qualified Dental Plan and the other benefits are provided by an Insurer  
10          through a Qualified Health Plan, provided that the plans are priced  
11          separately and are also made available for purchase separately at the same  
12          price.

13          (f)    Any Insurer offering only catastrophic plans outside of the Exchange Authority  
14          without offering any plans in the Exchange will be required to participate in the Exchange  
15          Authority and offer identical catastrophic plans inside of the Exchange Authority.

16          **"§ 58-50-360. Choice.**

17          (a)    In accordance with section 1312(f)(2)(A) of the Federal Act, a Qualified Employer  
18          either may designate one or more Qualified Health Plans from which its employees may choose  
19          or designate any level of coverage to be made available to employees through the SHOP  
20          Exchange.

21          (b)    In accordance with section 1312(b) of the Federal Act, a Qualified Individual  
22          enrolled in any Qualified Health Plan may pay any applicable premium owed by such  
23          individual to the Health Insurer issuing such Qualified Health Plan.

24          (c)    In accordance with section 1312(c) of the Federal Act, the following risk pools are  
25          established:

26               (1)    Individual Market. – A Health Insurer shall consider all enrollees in all  
27               health plans other than Grandfathered Health Plans offered by such Insurer  
28               in the individual market, including those enrollees who do not enroll in such  
29               plans through the Individual Exchange, to be members of a single risk pool.

30               (2)    Small Group Market. – A Health Insurer shall consider all enrollees in all  
31               health plans other than Grandfathered Health Plans offered by such Insurer  
32               in the small group market, including those enrollees who do not enroll in  
33               such plans through the SHOP Exchange, to be members of a single risk pool.

34          (d)    In accordance with section 1312(d) of the Federal Act, this section shall not prohibit  
35          either of the following:

36               (1)    A Health Insurer from offering outside of the Individual Exchange or the  
37               SHOP Exchange a health plan to a Qualified Individual or a Qualified  
38               Employer.

39               (2)    A Qualified Individual from enrolling in, or a Qualified Employer from  
40               selecting for its employees, a health plan offered outside of the Exchange  
41               Authority.

42          (e)    This section shall not limit the operation of any requirement under State law or  
43          regulation with respect to any policy or plan that is offered outside of the Exchange Authority  
44          with respect to any requirement to offer benefits.

45          (f)    Nothing in this section shall restrict the choice of a Qualified Individual to enroll or  
46          not to enroll in a Qualified Health Plan or to participate in the Individual Exchange.

47          (g)    Nothing in this section shall compel an individual to enroll in a Qualified Health  
48          Plan or to participate in the Exchange Authority.

49          (h)    A Qualified Individual may enroll in any Qualified Health Plan, except that in the  
50          case of a catastrophic plan described in section 1302(e) of the Federal Act, a Qualified

1 Individual may enroll in the plan only if the individual is eligible to enroll in the plan under  
2 section 1312(e)(2) of the Federal Act.

3 (i) Nothing in this act or the Federal Act shall be construed to terminate, abridge, or  
4 limit the operation of any requirement under State law with respect to any Health Benefit Plan  
5 that is offered outside of the Exchange Authority.

6 (j) In accordance with section 1312(e) of the Federal Act, the Exchange Authority shall  
7 allow Agents or Brokers to do the following:

8 (1) To enroll Qualified Individuals and Qualified Employers in any Qualified  
9 Health Plan offered through the Exchange Authority for which the individual  
10 or employer is eligible.

11 (2) To assist Qualified Individuals in applying for premium tax credits and  
12 cost-sharing reductions for any Qualified Health Plan purchased through the  
13 Individual Exchange.

14 (k) Any compensation to Agents and Brokers paid under this Part shall be determined  
15 by the insurer.

16 **"§ 58-50-370. Funding; publication of costs.**

17 (a) Beginning in 2014, the funding stream that supports the North Carolina Health  
18 Insurance Risk Pool shall be utilized to support the operations of the Exchange Authority.  
19 Beginning in 2015, the funding stream that supports the North Carolina Health Insurance Risk  
20 Pool shall be utilized to support the operations of the Exchange Authority that serve those  
21 individuals with incomes less than or equal to four hundred percent (400%) of the federal  
22 poverty level and Qualified Employers receiving a tax credit for the purchase of insurance  
23 pursuant to the Federal Act. The proportional cost associated with serving individuals with  
24 incomes over four hundred percent (400%) of the federal poverty level and the Qualified  
25 Employers not receiving a tax credit pursuant to the Federal Act shall be funded by an annual  
26 user fee paid by the individual or the employer to the Exchange Authority. The user fee  
27 assessed by the Exchange Authority shall be no greater than the anticipated expenses for  
28 servicing this market for the applicable fiscal year and must be approved by the Commissioner.  
29 Additionally, the Exchange Authority is authorized to utilize grant funding for operations,  
30 including, but not limited to, grant funding from the Federal Department of Health and Human  
31 Services. The Exchange Authority is also authorized to collect and use advertising fees to help  
32 support operations of the Exchange Authority.

33 (b) Prior to the commencement of the 2013 Regular Session of the 2013 General  
34 Assembly, the Exchange Authority shall examine its potential operational costs and propose to  
35 the General Assembly any additional changes to the funding stream necessary to ensure its  
36 solvency. Proposals submitted by the Exchange Authority to ensure the Exchange Authority's  
37 solvency shall not include appropriations from the General Fund.

38 (c) As required by section 1311(d)(5)(A) of the Federal Act, the Exchange Authority  
39 shall be self-sustaining by January 1, 2015. A budget for the Exchange Authority shall be  
40 prepared by the Exchange Authority and submitted to the Commissioner annually for approval  
41 at least 120 days before the beginning of the next fiscal year.

42 (d) Services performed by the Exchange Authority on behalf of other State or federal  
43 programs shall be paid for by those State or federal programs.

44 (e) Any unspent funding by the Exchange Authority shall be used for future operation  
45 of the Exchange Authority or reducing future user fees.

46 (f) The Exchange Authority shall publish the average costs of licensing, regulatory  
47 fees, and any other payments required by the Exchange Authority, and the administrative costs  
48 of the Exchange Authority, on an Internet Web site to educate consumers on such costs. This  
49 information shall include information on monies lost to waste, fraud, and abuse.

50 (g) The Exchange Authority is exempt from any and all State taxes.

51 **"§ 58-50-380. Audit.**



1        An audit of the Exchange Authority shall be conducted annually under the oversight of the  
2 State Auditor. The cost of the audit shall be reimbursed to the State Auditor from Exchange  
3 Authority funds."

4        **SECTION 3.** Nothing in this act shall be construed to interfere with payments to  
5 federally qualified health centers. If any item or service covered by a qualified health plan is  
6 provided by a federally qualified health center, as defined in section 1905(1)(2)(B) under the  
7 Social Security Act, 42 U.S.C. § 1396d(1)(2)(B), to an enrollee of the plan, the offeror of the  
8 plan shall pay to the center for the item or services an amount that is not less than the amount of  
9 payment that would have been paid to the center under section 1902(bb) of the Social Security  
10 Act for such item or service.

11        **SECTION 4.** Severability. – If any provision of this act is held invalid by a court  
12 of competent jurisdiction, then Part 8 of Article 50 of Chapter 58 of the General Statutes, as  
13 established by this act, is repealed. If section 1311 of the federal Patient Protection and  
14 Affordable Care Act or the federal Patient Protection and Affordable Care Act in its entirety is  
15 repealed or held invalid by a court of competent jurisdiction, then Part 8 of Article 50 of  
16 Chapter 58 of the General Statutes, as established by this act, is repealed. If funding is not  
17 provided as set forth in the federal Patient Protection and Affordable Care Act, then Part 8 of  
18 Article 50 of Chapter 58 of the General Statutes, as established by this act, shall not be  
19 enforceable.

20        **SECTION 5.** This act is effective when it becomes law.