

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 343
PROPOSED HOUSE COMMITTEE SUBSTITUTE S343-PCS15219-BAf-26

Short Title: Legal Notices/Newsprint Employees.

(Public)

Sponsors:

Referred to:

March 22, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE PUBLICATION OF LEGAL ADVERTISEMENTS AND
3 NOTICES; TO CREATE A PILOT PROGRAM TO AUTHORIZE CERTAIN COUNTIES
4 TO OPT TO POST LEGAL ADVERTISEMENTS AND NOTICES ON THE COUNTY
5 WEB SITE; AND TO AMEND PROVISIONS OF CERTAIN BENEFITS FOR
6 NEWSPRINT EMPLOYEES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.(a)** Article 50 of Chapter 1 of the General Statutes reads as rewritten:

9 "Article 50.

10 "General Provisions as to Legal Advertising.

11 **"§ 1-595. Advertisement of public sales.**

12 When a statute or written instrument stipulates that an advertisement of a sale shall be made
13 for any certain number of weeks, a publication once a week for the number of weeks so
14 indicated is a sufficient compliance with the requirement, unless contrary provision is expressly
15 made by the terms of the instrument.

16 **"§ 1-596. Charges for legal advertising.**

17 (a) The publication of all advertising required by law to be made in newspapers in this
18 State shall be paid for at not to exceed the local commercial rate of the newspapers selected.
19 Any public or municipal officer or board created by or existing under the laws of this State that
20 is now or may hereafter be authorized by law to enter into contracts for the publication of legal
21 advertisements is hereby authorized to pay therefor prices not exceeding said rates.

22 ~~No newspaper in this State shall accept or print any legal advertising until said newspaper~~
23 ~~shall have first filed with the clerk of the superior court of the county in which it is published a~~
24 ~~sworn statement of its current commercial rate for the several classes of advertising regularly~~
25 ~~carried by said publication, and any owner or manager of a newspaper violating the provisions~~
26 ~~of this section shall be guilty of a Class 1 misdemeanor.~~

27 (b) When a notice is required by statute to be published by a unit of government more
28 than once and is paid for by the unit of government and the cost of publication is not paid in
29 advance by or allowed to be recouped from private parties, the unit of government may not be
30 charged for the second and successive publications of that notice at a rate greater than
31 eighty-five percent (85%) of the rate charged for the first publication in the series.

32 **"§ 1-597. Regulations-Requirements for newspaper publication of to be eligible to publish**
33 **legal notices, advertisements, etc.**

34 (a) Whenever a notice or any other paper, document or legal advertisement of any kind
35 or description shall be authorized or required by any of the laws of the State ~~of North Carolina,~~
36 ~~heretofore or hereafter enacted,~~ or by any order or judgment of any court of this State to be



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1 published or advertised in a newspaper, such publication, advertisement or notice shall be of no
2 force and effect unless it shall be published in a newspaper with a general circulation to actual
3 paid subscribers which newspaper at the time of such publication, advertisement or notice, shall
4 have been admitted to the United States mails in the Periodicals class in the county or political
5 subdivision where such publication, advertisement or notice is required to be published, and
6 which shall have been regularly and continuously issued in the county in which the publication,
7 advertisement or notice is authorized or required to be published, at least one day in each
8 calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the
9 first publication of such advertisement, publication or notice; provided that in the event that a
10 newspaper otherwise meeting the qualifications and having the characteristics prescribed by
11 G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to
12 publish one or more of its issues such newspaper shall nevertheless be deemed to have
13 complied with the requirements of regularity and continuity of publication prescribed herein.
14 Provided further, that where any city or town is located in two or more adjoining counties, any
15 newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be
16 deemed to be admitted to the mails, issued and published in all such counties in which such
17 town or city of publication is located, and every publication, advertisement or notice required to
18 be published in any such city or town or in any of the counties where such city or town is
19 located shall be valid if published in a newspaper published, issued and admitted to the mails
20 anywhere within any such city or town, regardless of whether the newspaper's plant or the post
21 office where the newspaper is admitted to the mails is in such county or not, if the newspaper
22 otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision
23 shall be retroactive to May 1, 1940, and all publications, advertisements and notices published
24 in accordance with this provision since May 1, 1940, are hereby validated.that is qualified
25 pursuant to this section.

26 Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper,
27 document or legal advertisement of any kind or description shall be authorized or required by
28 any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order
29 or judgment of any court of this State to be published or advertised in a newspaper qualified for
30 legal advertising in a county and there is no newspaper qualified for legal advertising as
31 defined in this section in such county, then it shall be deemed sufficient compliance with such
32 laws, order or judgment by publication of such notice or any other such paper, document or
33 legal advertisement of any kind or description in a newspaper published in an adjoining county
34 or in a county within the same district court district as defined in G.S. 7A-133 or superior court
35 district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk
36 of the superior court finds as a fact that such newspaper otherwise meets the requirements of
37 this section and has a general circulation in such county where no newspaper is published
38 meeting the requirements of this section.

39 (b) To qualify as a newspaper eligible to publish any of items listed in subsection (a) of
40 this section in a particular county, a newspaper must meet all of the following criteria:

- 41 (1) The newspaper has a content that appeals to the public generally.
- 42 (2) The newspaper must have at least 100 paid subscribers and distribute at least
43 1,000 copies per issue in the county where the newspaper is seeking
44 qualification.
- 45 (3) The newspaper's paid subscriber distribution is not entirely limited
46 geographically to one community or section of the county where the
47 newspaper is seeking qualification.
- 48 (4) In the county where the newspaper is seeking qualification, any person who
49 wishes to do so may subscribe to the newspaper.

1 (5) The newspaper must have regularly and continuously published for at least
2 one day in each calendar week for at least 50 of the 52 consecutive weeks
3 immediately preceding the date of the application.

4 (c) Prior to publishing any of the items listed in subsection (a) in a particular county,
5 the owner, publisher, or other authorized officer or employee of the newspaper shall submit to
6 the clerk of superior court of that county a sworn affidavit that the newspaper meets all of the
7 criteria listed in subsection (b) of this section. The sworn affidavit shall be accompanied by a
8 fee of five hundred dollars (\$500.00). A newspaper may qualify in more than one county. A
9 separate application, and application and renewal fee, shall be submitted for each county in
10 which a newspaper seeks to qualify.

11 (d) Upon filing the sworn affidavit and paying filing fee required by subsection (c) of
12 this section, the newspaper shall be qualified to publish in the county any of the items listed in
13 subsection (a) of this section. The newspaper shall remain qualified in that county as long as it
14 continues to meet the requirements in subsections (b) and (e) of this section. A newspaper may
15 be disqualified from publishing any of the items listed in subsection (a) of this section by order
16 of a superior court judge.

17 (e) If qualified, a newspaper shall pay an annual renewal fee of one hundred dollars
18 (\$100.00) to the clerk of superior court in each county in which it seeks to remain qualified to
19 publish any of the items listed in subsection (a) of this section.

20 (f) The Clerk shall remit, at least monthly, to the Director of the Administrative Office
21 of the Courts the affidavits filed and the fees collected in accordance with subsections (c) and
22 (e) this section. The Director shall keep, by county, an index and record of all such affidavits,
23 initial filing fees, and renewal fees, which shall be a public record.

24 **"§ 1-597.5. Requirements for electronic publication.**

25 (a) If the newspaper maintains an Internet Website displaying the contents of the
26 newspaper, then, at no additional charge, each notice must be placed on that newspaper's
27 Internet Website on the same day that the notice appears in the print newspaper. The
28 newspaper shall comply with all of the following with respect to the Internet Website display:

29 (1) A hyperlink to legal notices shall be provided on the front page of the
30 newspaper's Internet Website that provides access to the legal notices
31 without charge.

32 (2) If there is a specified size and placement required for a printed legal notice,
33 the size and placement of the notice on the newspaper's Internet Website
34 shall optimize its online visibility in keeping with the print requirement.

35 (3) The newspaper's Internet Website pages that contain legal notices shall
36 present the legal notices as the dominant subject matter of those pages.

37 (4) The newspaper's Internet Website shall contain a search function to
38 facilitate searching legal notices.

39 (5) Notification for the electronic mail registry, as required by subsection (b) of
40 this section, shall be available on the front page of the legal notices section
41 of the newspaper's Internet Website.

42 (b) Upon request of a person, newspapers that publish notices shall provide electronic
43 mail notification to that person of legal notices when such notices are printed in the newspaper
44 or added to the newspaper's Internet Website. The electronic mail notification shall be provided
45 without charge. For any legal notice required to be published more than once, electronic mail
46 notification required by this subsection shall apply only to the first publication in the series of
47 that notice.

48 (c) Any error in the placement of a governmental legal notice on a newspaper's Internet
49 Website or the delivery of an electronic mail notification shall be considered harmless error.
50 The requirement of proper legal notice shall be deemed to have been met if the notice is
51 properly published in the print edition of the newspaper.

1 (d) Any owner or manager of a newspaper willfully violating the provisions of
2 subsection (b) of this section shall be guilty of a Class 3 misdemeanor.

3 **"§ 1-598. Sworn statement prima facie evidence of qualifications; affidavit of**
4 **publication.~~publication by a newspaper.~~**

5 (a) Whenever any owner, partner, publisher, or other authorized officer or employee of
6 any newspaper which has published a notice or any other paper, document or legal
7 advertisement within the meaning of G.S. 1-597 has made a written statement under oath taken
8 before any notary public or other officer or person authorized by law to administer oaths,
9 stating that the newspaper in which such notice, paper, document, or legal advertisement was
10 published, was, at the time of such publication, a newspaper meeting all of the requirements
11 and qualifications prescribed by G.S. 1-597, such sworn written statement shall be received in
12 all courts in this State as prima facie evidence that such newspaper was at the time stated
13 therein a newspaper meeting the requirements and qualifications of G.S. 1-597. When filed in
14 the office of the clerk of the superior court of any county in which the publication of such
15 notice, paper, document or legal advertisement was required or authorized, any such sworn
16 statement shall be deemed to be a record of the court, and such record or a copy thereof duly
17 certified by the clerk shall be prima facie evidence that the newspaper named was at the time
18 stated therein a qualified newspaper within the meaning of G.S. 1-597. Nothing in this section
19 shall preclude proof that a newspaper was or is a qualified newspaper within the meaning of
20 G.S. 1-597 by any other competent evidence. Any such sworn written statement shall be prima
21 facie evidence of the qualifications on any newspaper at the time of any publication of any
22 notice, paper, document, or legal advertisement published in such newspaper at any time from
23 and after the first day of May, 1940.

24 (b) The owner, a partner, publisher or other authorized officer or employee of any
25 newspaper in which such notice, paper, document or legal advertisement is published, when
26 such newspaper is a qualified newspaper within the meaning of G.S. 1-597, shall include in the
27 affidavit of publication of such notice, paper, document or legal advertisement a statement that
28 at the time of such publication such newspaper was a qualified newspaper within the meaning
29 of G.S. 1-597.

30 ~~"§ 1-599. Application of two preceding sections.~~

31 ~~The provisions of G.S. 1-597 and G.S. 1-598 shall not apply in counties wherein only one~~
32 ~~newspaper is published, although it may not be a newspaper having the qualifications~~
33 ~~prescribed by G.S. 1-597; nor shall the provisions of G.S. 1-597 and G.S. 1-598 apply in any~~
34 ~~county wherein none of the newspapers published in such county has the qualifications and~~
35 ~~characteristics prescribed in G.S. 1-597.~~

36 **"§ 1-600. Proof of publication of notice in newspaper; prima facie evidence.**

37 (a) Publication of any notice permitted or required by law to be published in a
38 newspaper may be proved by a printed copy of the notice together with an affidavit made
39 before some person authorized to administer oaths, of the publisher, proprietor, editor,
40 managing editor, business or circulation manager, advertising, classified advertising or any
41 other advertising manager or foreman of the newspaper, showing that the notice has been
42 printed therein and the date or dates of publication. If the newspaper is published by a
43 corporation, the affidavit may be made by one of the persons hereinbefore designated or by the
44 president, vice president, secretary, assistant secretary, treasurer, or assistant treasurer of the
45 corporation.

46 (b) Such affidavit and copy of the notice shall constitute prima facie evidence of the
47 facts stated therein concerning publication of such notice.

48 (c) The method of proof of publication of a notice provided for in this section is not
49 exclusive, and the facts concerning such publication may be proved by any competent
50 evidence.

51 **"§ 1-600.5. Procedure when no newspaper is qualified in a county.**

1 Whenever a notice or any other paper, document, or legal advertisement of any kind or
2 description shall be authorized or required by any of the laws of this State, or by any order of
3 the courts of this State, to be published or advertised in a newspaper and there is no newspaper
4 qualified under G.S. 1-597 in the county of publication, then it shall be deemed sufficient
5 compliance to publish in a newspaper qualified under G.S. 1-597 in an adjoining county or
6 another county in the same judicial district or set of districts.

7 ~~"§ 1-601. Certain legal advertisements validated.~~

8 ~~Legal advertisements published prior to June 1, 1983, by a newspaper that met every~~
9 ~~requirement for publication of legal notices and advertisements under G.S. 1-597 when the~~
10 ~~advertisement was published except that the newspaper had a second class United States mail~~
11 ~~permit in a county adjacent to the county in which the advertisement was published instead of~~
12 ~~the county in which it was published may not be held to be invalid because of the lack of a~~
13 ~~second class United States mail permit in the proper county.~~

14 ~~"§ 1-602. Reserved for future codification purposes.~~

15 ~~"§ 1-603. Reserved for future codification purposes.~~

16 ~~"§ 1-604. Reserved for future codification purposes."~~

17 **SECTION 1.(b)** G.S. 45-21.17(1)b. reads as rewritten:

18 "b. And in addition thereto,

- 19 1. The notice shall be published once a week for at least two
20 successive weeks in a newspaper ~~published and~~ qualified for
21 legal advertising pursuant to G.S. 1-597 in the county in
22 which the property is situated.
- 23 2. If no such newspaper is ~~published qualified in the that~~ county,
24 then notice shall be published once a week for at least two
25 successive weeks in a newspaper ~~having a general circulation~~
26 ~~in the county accordance with G.S. 1-600.5.~~
- 27 3. ~~In addition to the required newspaper advertisement, the clerk~~
28 ~~may in his discretion, on application of any interested party,~~
29 ~~authorize such additional advertisement as in the opinion of~~
30 ~~the clerk will serve the interest of the parties, and permit the~~
31 ~~charges for such further advertisement to be taxed as a part of~~
32 ~~the costs of the foreclosure."~~

33 **SECTION 1.(c)** This section becomes effective October 1, 2017, and applies to
34 notices that must be published on or after that date.

35 **SECTION 2.** G.S. 97-2(2) reads as rewritten:

36 "(2) Employee. – The term "employee" means every person engaged in an
37 employment under any appointment or contract of hire or apprenticeship,
38 express or implied, oral or written, including aliens, and also minors,
39 whether lawfully or unlawfully employed, but excluding persons whose
40 employment is both casual and not in the course of the trade, business,
41 profession, or occupation of his employer, and as relating to those so
42 employed by the State, the term "employee" shall include all officers and
43 employees of the State, including such as are elected by the people, or by the
44 General Assembly, or appointed by the Governor to serve on a per diem,
45 part-time or fee basis, either with or without the confirmation of the Senate;
46 as relating to municipal corporations and political subdivisions of the State,
47 the term "employee" shall include all officers and employees thereof,
48 including such as are elected by the people. The term "employee" shall
49 include members of the North Carolina National Guard while on State active
50 duty under orders of the Governor and members of the North Carolina State
51 Defense Militia while on State active duty under orders of the Governor. The

1 term "employee" shall include deputy sheriffs and all persons acting in the
2 capacity of deputy sheriffs, whether appointed by the sheriff or by the
3 governing body of the county and whether serving on a fee basis or on a
4 salary basis, or whether deputy sheriffs serving upon a full-time basis or a
5 part-time basis, and including deputy sheriffs appointed to serve in an
6 emergency, but as to those so appointed, only during the continuation of the
7 emergency. The sheriff shall furnish to the board of county commissioners a
8 complete list of all deputy sheriffs named or appointed by him immediately
9 after their appointment and notify the board of commissioners of any
10 changes made therein promptly after such changes are made. Any reference
11 to an employee who has been injured shall, when the employee is dead,
12 include also the employee's legal representative, dependents, and other
13 persons to whom compensation may be payable: Provided, further, that any
14 employee, as herein defined, of a municipality, county, or of the State of
15 North Carolina, while engaged in the discharge of the employee's official
16 duty outside the jurisdictional or territorial limits of the municipality, county,
17 or the State of North Carolina and while acting pursuant to authorization or
18 instruction from any superior officer, shall have the same rights under this
19 Article as if such duty or activity were performed within the territorial
20 boundary limits of their employer.

21 Except as otherwise provided herein, every executive officer elected or
22 appointed and empowered in accordance with the charter and bylaws of a
23 corporation shall be considered as an employee of such corporation under
24 this Article.

25 Any such executive officer of a corporation may, notwithstanding any
26 other provision of this Article, be exempt from the coverage of the
27 corporation's insurance contract by such corporation's specifically excluding
28 such executive officer in such contract of insurance, and the exclusion to
29 remove such executive officer from the coverage shall continue for the
30 period such contract of insurance is in effect, and during such period such
31 executive officers thus exempted from the coverage of the insurance contract
32 shall not be employees of such corporation under this Article.

33 All county agricultural extension service employees who do not receive
34 official federal appointments as employees of the United States Department
35 of Agriculture and who are field faculty members with professional rank as
36 designated in the memorandum of understanding between the North
37 Carolina Agricultural Extension Service, North Carolina State University, A
38 & T State University, and the boards of county commissioners shall be
39 deemed to be employees of the State of North Carolina. All other county
40 agricultural extension service employees paid from State or county funds
41 shall be deemed to be employees of the county board of commissioners in
42 the county in which the employee is employed for purposes of workers'
43 compensation.

44 The term "employee" shall also include members of the Civil Air Patrol
45 currently certified pursuant to G.S. 143B-1031(a) when performing duties in
46 the course and scope of a State-approved mission pursuant to Subpart C of
47 Part 5 of Article 13 of Chapter 143B of the General Statutes.

48 "Employee" shall not include any person performing voluntary service as
49 a ski patrolman who receives no compensation for such services other than
50 meals or lodging or the use of ski tow or ski lift facilities or any combination
51 thereof.

1 "Employee" shall not include any person elected or appointed and
2 empowered as an executive officer, director, or committee member under the
3 charter, articles, or bylaws of a nonprofit corporation subject to Chapter
4 47A, 47C, 47F, 55A, or 59B of the General Statutes, or any organization
5 exempt from federal income tax under section 501(c)(3) of the Internal
6 Revenue Code, who performs only voluntary service for the nonprofit
7 corporation, provided that the person receives no remuneration for the
8 voluntary service other than reasonable reimbursement for expenses incurred
9 in connection with the voluntary service. When a nonprofit corporation as
10 described herein employs one or more persons who do receive remuneration
11 other than reasonable reimbursement for expenses, then any volunteer
12 officers, directors, or committee members excluded from the definition of
13 "employee" by operation of this paragraph shall be counted as employees for
14 the sole purpose of determining the number of persons regularly employed
15 in the same business or establishment pursuant to G.S. 97-2(1). Other than
16 for the limited purpose of determining the number of persons regularly
17 employed in the same business or establishment, such volunteer nonprofit
18 officers, directors, or committee members shall not be "employees" under
19 the Act. Nothing herein shall prohibit a nonprofit corporation as described
20 herein from voluntarily electing to provide for workers' compensation
21 benefits in the manner provided in G.S. 97-93 for volunteer officers,
22 directors, or committee members excluded from the definition of
23 "employee" by operation of this paragraph. This paragraph shall not apply to
24 any volunteer firefighter, volunteer member of an organized rescue squad, an
25 authorized pickup firefighter when that individual is engaged in emergency
26 fire suppression activities for the North Carolina Forest Service, a duly
27 appointed and sworn member of an auxiliary police department organized
28 pursuant to G.S. 160A-282, or a senior member of the State Civil Air Patrol
29 functioning under Subpart C of Part 5 of Article 13 of Chapter 143B of the
30 General Statutes, even if such person is elected or appointed and empowered
31 as an executive officer, director, or committee member under the charter,
32 articles, or bylaws of a nonprofit corporation as described herein.

33 Any sole proprietor or partner of a business or any member of a limited
34 liability company may elect to be included as an employee under the
35 workers' compensation coverage of such business if he is actively engaged in
36 the operation of the business and if the insurer is notified of his election to
37 be so included. Any such sole proprietor or partner or member of a limited
38 liability company shall, upon such election, be entitled to employee benefits
39 and be subject to employee responsibilities prescribed in this Article.

40 "Employee" shall include an authorized pickup firefighter of the North
41 Carolina Forest Service of the Department of Agriculture and Consumer
42 Services when that individual is engaged in emergency fire suppression
43 activities for the North Carolina Forest Service. As used in this section,
44 "authorized pickup firefighter" means an individual who has completed
45 required fire suppression training as a wildland firefighter and who is
46 available as needed by the North Carolina Forest Service for emergency fire
47 suppression activities, including immediate dispatch to wildfires and standby
48 for initial attack on fires during periods of high fire danger.

49 ~~It shall be a rebuttable presumption that the term "employee" shall not~~
50 ~~include any person performing services in the sale of newspapers or~~
51 ~~magazines to ultimate consumers under an arrangement whereby the~~

1 newspapers or magazines are to be sold by that person at a fixed price and
2 the person's compensation is based on the retention of the excess of the fixed
3 price over the amount at which the newspapers or magazines are charged to
4 the person."

5 **SECTION 3.(a)** Pilot Program. – For the counties of Buncombe, Durham, Forsyth,
6 and Guilford, the board of county commissioners may, in the discretion of the board, adopt an
7 ordinance establishing the county Website as a central location for publishing or advertising
8 legal notices in accordance with this section, if the county complies with all of the following:

- 9 (1) The county maintains its own Website with sufficient staff to maintain that
10 Website.
11 (2) The county has sufficient staff to complete affidavits as needed for all legal
12 notices.

13 **SECTION 3.(b)** Publication Via County-maintained Website. – In lieu of
14 publishing in a newspaper in accordance with Article 50 of Chapter 1 of the General Statutes,
15 publication of any notice permitted or required by law to be published in a newspaper may be
16 accomplished by contracting with a county who has adopted an ordinance in accordance with
17 this section to publish such notice on the county-maintained Website.

18 **SECTION 3.(c)** Affidavit of Publication. – Whenever a county has published a
19 notice or any other paper, document, or legal advertisement within the meaning of G.S. 1-597
20 and a county employee makes a written statement under oath taken before any notary public or
21 other officer or person authorized by law to administer oaths, stating that the county placed
22 such notice, paper, document, or legal advertisement upon its Website, such sworn written
23 statement shall be received in all courts in this State as prima facie evidence that the county
24 placed the notice, paper, document, or legal advertisement upon its Website for the stated
25 period of time. When filed in the office of the clerk of the superior court of that county, any
26 such sworn statement shall be deemed to be a record of the court and such record or a copy
27 thereof duly certified by the clerk shall be prima facie evidence that the county placed the
28 notice, paper, document, or legal advertisement upon its Website for the stated period of time.

29 **SECTION 3.(d)** When a statute or written instrument stipulates that an
30 advertisement of a sale shall be made for any certain number of weeks, publication via the
31 county Website in accordance with this section for the number of weeks so indicated is a
32 sufficient compliance with the requirement.

33 **SECTION 3.(e)** This section becomes effective October 1, 2017, and expires
34 December 31, 2019.

35 **SECTION 4.** The validation of any publication, advertisement, or notice pursuant
36 to a previous enactment of G.S. 1-597 remains in effect and is not affected by any
37 modifications of that statute enacted by Section 1 of this act.

38 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
39 law.