

HOUSE BILL NO. 877

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Earley)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-608, relating to Virginia Social Media Regulation Act established; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-608, as follows:

§ 59.1-200. Prohibited practices.

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

- 1. Misrepresenting goods or services as those of another;
- 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
- 4. Misrepresenting geographic origin in connection with goods or services;
- 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
- 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class,"

27 without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used,
28 secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars,
29 imperfects or "not first class";

30 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
31 at the price or upon the terms advertised.

32 In any action brought under this subdivision, the refusal by any person, or any employee, agent,
33 or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
34 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall
35 not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods
36 or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount
37 of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer
38 did in fact have or reasonably expected to have at least such quantity or amount for sale;

39 9. Making false or misleading statements of fact concerning the reasons for, existence of, or
40 amounts of price reductions;

41 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or
42 parts installed;

43 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
44 or bill for merchandise or services previously ordered;

45 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
46 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's
47 business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the
48 goods or services advertised or offered for sale;

49 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
50 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
51 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or
52 under federal statutes or regulations;

53 13a. Failing to provide to a consumer, or failing to use or include in any written document or
54 material provided to or executed by a consumer, in connection with a consumer transaction any statement,
55 disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R.
56 Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection
57 with the consumer transaction;

58 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in
59 connection with a consumer transaction;

60 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
61 3.2-6516, or 3.2-6519 is a violation of this chapter;

62 16. Failing to disclose all conditions, charges, or fees relating to:

63 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
64 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
65 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
66 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
67 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
68 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for
69 the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the
70 case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund
71 may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not
72 apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for
73 clearance; nor does this subdivision apply to special order purchases where the purchaser has requested
74 the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the
75 store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or
76 lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

77 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the
78 time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
79 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of

80 sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the
81 agreement;

82 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in
83 excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's
84 overpayment on such account. Suppliers shall give consumers written notice of such credit balances within
85 60 days of receiving overpayments. If the credit balance information is incorporated into statements of
86 account furnished consumers by suppliers within such 60-day period, no separate or additional notice is
87 required;

88 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
89 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
90 agreement;

91 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

92 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1
93 et seq.);

94 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1
95 et seq.);

96 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-
97 207.17 et seq.);

98 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

99 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-
100 424 et seq.);

101 24. Violating any provision of § 54.1-1505;

102 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act,
103 Chapter 17.6 (§ 59.1-207.34 et seq.);

104 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

105 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

106 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

- 107 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
108 seq.);
- 109 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40
110 et seq.);
- 111 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 112 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 113 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 114 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 115 35. Using the consumer's social security number as the consumer's account number with the
116 supplier, if the consumer has requested in writing that the supplier use an alternate number not associated
117 with the consumer's social security number;
- 118 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 119 37. Violating any provision of § 8.01-40.2;
- 120 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 121 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 122 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 123 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§
124 59.1-525 et seq.);
- 125 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 126 43. Violating any provision of § 59.1-443.2;
- 127 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 128 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 129 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 130 47. Violating any provision of § 18.2-239;
- 131 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 132 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or
133 has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable

134 presumption that a supplier has reason to know a children's product was recalled if notice of the recall has
135 been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the
136 website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's
137 products that are used, secondhand or "seconds";

138 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);

139 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

140 52. Violating any provision of § 8.2-317.1;

141 53. Violating subsection A of § 9.1-149.1;

142 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
143 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
144 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
145 which defective drywall has been permanently installed or affixed;

146 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
147 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-
148 146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
149 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
150 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

151 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

152 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

153 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

154 59. Violating any provision of subsection E of § 32.1-126;

155 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession
156 licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

157 61. Violating any provision of § 2.2-2001.5;

158 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

159 63. Violating any provision of § 6.2-312;

160 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

- 161 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;
- 162 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);
- 163 67. Knowingly violating any provision of § 8.01-27.5;
- 164 68. Failing to, in accordance with § 59.1-207.46, (i) make available a conspicuous online option
- 165 to cancel a recurring purchase of a good or service or (ii) with respect to a free trial lasting more than 30
- 166 days, notify a consumer of his option to cancel such free trial within 30 days of the end of the trial period
- 167 to avoid an obligation to pay for the goods or services;
- 168 69. Selling or offering for sale any substance intended for human consumption, orally or by
- 169 inhalation, that contains a synthetic derivative of tetrahydrocannabinol. As used in this subdivision,
- 170 "synthetic derivative" means a chemical compound produced by man through a chemical transformation
- 171 to turn a compound into a different compound by adding or subtracting molecules to or from the original
- 172 compound. This subdivision shall not (i) apply to products that are approved for marketing by the U.S.
- 173 Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be
- 174 construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 175 70. Selling or offering for sale to a person younger than 21 years of age any substance intended
- 176 for human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
- 177 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
- 178 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
- 179 permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;
- 180 71. Selling or offering for sale any substance intended for human consumption, orally or by
- 181 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
- 182 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
- 183 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to persons
- 184 younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of such
- 185 substance that constitutes a single serving, and (d) the total percentage and milligrams of
- 186 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol that
- 187 are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an

188 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
189 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
190 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
191 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
192 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
193 (ii) be construed to prohibit any conduct permitted under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1;

194 72. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as
195 defined in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
196 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit;

197 73. Selling or offering for sale any substance intended for human consumption, orally or by
198 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a container
199 or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark as defined
200 in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of a
201 manufacturer, processor, packer, or distributor of a product intended for human consumption other than
202 the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
203 distribute such substance;

204 74. Selling or offering for sale a topical hemp product, as defined in § 3.2-4112, that does not
205 include a label stating that the product is not intended for human consumption. This subdivision shall not
206 (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
207 scheduled in the Drug Control Act (§ 54.1-3400 et seq.), (ii) be construed to prohibit any conduct permitted
208 under Chapter 16 (§ 4.1-1600 et seq.) of Title 4.1, or (iii) apply to topical hemp products that were
209 manufactured prior to July 1, 2023, provided that the person provides documentation of the date of
210 manufacture if requested;

211 75. Violating any provision of § 59.1-466.8;

212 76. Violating subsection F of § 36-96.3:1;

213 77. Selling or offering for sale (i) any kratom product to a person younger than 21 years of age or
214 (ii) any kratom product that does not include a label listing all ingredients and with the following guidance:

215 "This product may be harmful to your health, has not been evaluated by the FDA, and is not intended to
216 diagnose, treat, cure, or prevent any disease." As used in this subdivision, "kratom" means any part of the
217 leaf of the plant *Mitragyna speciosa* or any extract thereof; ~~and~~

218 78. Failing to disclose the total cost of a good or continuous service, as defined in § 59.1-207.45,
219 to a consumer, including any mandatory fees or charges, prior to entering into an agreement for the sale
220 of any such good or provision of any such continuous service; and

221 79. Violating any provision of Chapter 57 (§ 59.1-603 et seq.).

222 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
223 lease solely by reason of the failure of such contract or lease to comply with any other law of the
224 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
225 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such
226 contract or lease.

227 CHAPTER 57.

228 VIRGINIA SOCIAL MEDIA REGULATION ACT.

229 **§ 59.1-603. Definitions.**

230 As used in this chapter, unless the context requires a different meaning:

231 "Account holder" means a Virginia resident who has, or opens, an account or profile to use a social
232 media company's platform.

233 "Addiction" means use of a social media platform that (i) indicates the user's substantial
234 preoccupation or obsession with, or the user's substantial difficulty to cease or reduce use of, the social
235 media platform and (ii) causes physical, mental, emotional, developmental, or material harms to the user.

236 "Interactive computer service" means an information service, information system, or information
237 access software provider that provides or enables computer access by multiple users to a computer server
238 and provides access to the Internet. "Interactive computer service" includes a web service, web system,
239 website, web application, and web portal.

240 "Minor" means Virginia resident who is under the age of 18, is not an emancipated minor, and is
241 not or has not been married.

242 "Post" means content that an account holder makes available on a social media platform for other
243 account holders or users to view.

244 "Social media company" means an interactive computer service provider of a social media
245 platform that has at least five million account holders worldwide.

246 "Social media platform" means a public or semipublic internet-based service or application that
247 has users in Virginia and that meets the following criteria:

248 1. A primary function of the service or application is to connect users in order to allow users to
249 interact socially with each other within the service or application. A service or application that provides
250 email or direct messaging services shall not be considered to meet such criterion on the basis of that
251 function alone.

252 2. The service or application allows users to (i) construct a public or semipublic profile for
253 purposes of signing into and using the service or application; (ii) populate a public list of other users with
254 whom an individual shares a social connection within the system; and (iii) create or post content viewable
255 by other users, including on message boards, in chat rooms, or through a landing page or main feed that
256 presents the user with content generated by other users. A service or application that consists of primarily
257 news, sports, entertainment, e-commerce, or content that is preselected by the provider, or for which any
258 chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the
259 provision of such content, shall not be considered to meet this criterion on the basis of that function alone.

260 "User" means an individual who has access to view all or some of the posts on a social media
261 platform, but who is not an account holder.

262 "Virginia resident" means an individual who currently resides in Virginia.

263 **§ 59.1-604. Age requirements for use of social media platform; parental consent.**

264 A. No social media company shall permit a minor to be an account holder on such social media
265 company's social media platform unless the minor has the express consent of a parent or guardian.
266 Notwithstanding any provision of this chapter, no social media company shall permit a minor to hold or
267 open an account on a social media platform if the minor is ineligible to hold or open an account under any
268 other provision of state or federal law.

269 B. A social media company shall verify the age of any Virginia resident account holder. If an
270 account holder is a minor, the social media company shall confirm that such minor has received parental
271 consent pursuant to subsection A at the time such user opens a new account or, for an account holder who
272 has not yet verified his age pursuant to this section, within 14 calendar days of such account holder's
273 attempt to access the account. If an account holder fails to meet the verification requirements of this section
274 within the required time period, the social media company shall deny access to the account upon the
275 expiration of the time period and until all verification requirements are met.

276 **§ 59.1-605. Prohibitions on data collection and advertising; use of information.**

277 With respect to any social media platform account held by a minor account holder, a social media
278 company:

279 1. Shall prohibit direct messaging between the minor and any other user that is not linked to the
280 minor's account through friending;

281 2. May not show the account in search results for any user that is not linked to the minor's account
282 through friending;

283 3. Shall prohibit the display of any advertising to the minor account holder;

284 4. Shall not collect or use any personal information from any posts, content, messages, text, or
285 usage activities of the minor's account other than information that is necessary to comply with, and to
286 verify compliance with, state or federal law, including the name of the minor's parent or guardian, the
287 minor's birth date, and any other information required to be submitted under this chapter; and

288 5. Shall prohibit the display of targeted or suggested groups, services, products, posts, accounts,
289 or users to the minor's account.

290 **§ 59.1-606. Limitations on use of social media accounts by minors; parental access.**

291 A. A social media company shall provide a minor's parent or guardian with a password or other
292 means for the parent or guardian to access the minor's account, which shall allow the parent or guardian
293 to view (i) all posts the minor account holder makes under the social media platform account and (ii) all
294 responses and messages sent to or by the minor account holder on the social media platform account.

295 B. A social media company shall prohibit a minor account holder from having access to the minor
296 account holder's account during the hours of 10:30 p.m. to 6:30 a.m., unless the access is modified by the
297 minor's parent or guardian. A social media company shall calculate the time of day for purposes of this
298 section based on the Internet Protocol address being used by the minor account holder at the time such
299 account holder attempts to access the account. A social media company shall provide options for a parent
300 or guardian with access to a minor's account to (i) change or eliminate the time-of-day restriction described
301 in this subsection and (ii) set a limit on the number of hours per day that a minor account holder may use
302 the account.

303 C. No social media company shall permit a minor account holder to change or bypass restrictions
304 on access as required by this section.

305 D. Notwithstanding any provision of this section, a social media company shall permit a parent or
306 guardian with access to a minor's account to access the minor's account with no time-of-day restrictions.

307 **§ 59.1-607. Social media platform design; civil penalty.**

308 A. No social media company shall use any practice, design, or feature on such company's social
309 media platform that the social media company knows, or which by the exercise of reasonable care should
310 know, could cause a minor account holder to have an addiction to the social media platform. In addition
311 to any other penalty provided by law, a social media company shall be subject to (i) a civil penalty of
312 \$250,000 for each practice, design, or feature shown to have caused addiction and (ii) a civil penalty of
313 up to \$2,500 for each minor account holder who is shown to have been exposed to any such practice,
314 design, or feature found to have caused addiction.

315 B. No social media company shall be subject to a civil penalty for violating this section if the social
316 media company, as an affirmative defense, demonstrates that the social media company (i) instituted and
317 maintained a program of at least quarterly audits of the social media company's practices, designs, and
318 features to detect practices, designs, or features that have the potential to cause or contribute to the
319 addiction of a minor account holder or user and (ii) corrected, within 30 days of the completion of an
320 audit, any practice, design, or feature discovered by the audit to present more than a de minimus risk of
321 violating this section.

322 C. Nothing in this section shall be construed to impose liability on a social media company for any
323 of the following:

324 1. Content that is generated by an account holder, or uploaded to or shared on a social media
325 platform by an account holder, that may be encountered by another account holder;

326 2. Passively displaying content that is created entirely by a third party;

327 3. Information or content for which the social media company was not, in whole or in part,
328 responsible for creating or developing; or

329 4. Any conduct by a social media company involving a minor account holder who would otherwise
330 be protected by federal or Virginia law.

331 D. Civil penalties assessed pursuant to this section shall be paid to the Literary Fund.

332 **§ 59.1-608. Enforcement; penalties.**

333 Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-
334 200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection
335 Act (§ 59.1-196 et seq.).

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