

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
INDECENT DECEPTIVE TRADE PRACTICES

Introduced By: Senator Elizabeth A. Crowley

Date Introduced: February 25, 2020

Referred To: Senate Commerce

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings - Background.

2 The general assembly finds that:

3 (1) The United States Supreme Court in *Ashcroft v. Am. Civil Liberties Union*, 542 U.S.
4 656 (2004) found that the legislative branch "may undoubtedly act to encourage the use of
5 filters....It could also take steps to promote their development by industry, and their use by parents,"
6 which was the Supreme Court's way of signaling to the legislative branch to pass filter legislation
7 that requires consumers to opt in to having access to obscene materials that are harmful to minors
8 on Internet-enabled devices, since filters are the least restrictive means.

9 (2) The United States Supreme Court found in *Ginsberg v. New York*, 390 U.S. 629 (1968)
10 that a physical display state statute that required physical brick and mortar stores to put physical
11 obscene material behind a physical blinder rack was constitutional under first amendment
12 heightened scrutiny, which means that a digital blinder rack statute that requires digital retailers to
13 put digital obscene material behind a digital blinder rack is also constitutional on the same legal
14 basis.

15 (3) Because the Supreme Court of the United States in *Paris Adult Theatre I v. Slaton*, 413
16 U.S. 49 (1973) made it clear that the states have a compelling interest to uphold community
17 standards of decency, a statute requiring a filter deactivation fee regarding websites displaying
18 obscene material and an adult service business admission fee are constitutional for being rationally

1 related to a narrowly tailored compelling state interest.

2 (4) The Texas Supreme Court in *Combs v. Texas Entertainment Association, et al.*, 347
3 S.W. 3d 277 (Sup. Ct. Tex. 2011), relying on Federal Constitutional law, found that a statute that
4 required a five dollar (\$5.00) admission fee to an adult service business that was to be remitted
5 back to the state to enable the state to uphold community standards of decency was constitutional
6 under First Amendment heightened scrutiny, which means that a one-time twenty dollar (\$20.00)
7 filter deactivation fee to enter the digital strip club on Internet-enabled devices is constitutional on
8 the sale legal basis, if remitted to the state to be used in the same manner.

9 (5) Sex trafficking has moved from the street corner to the smartphone, which means that
10 making websites that facilitate human trafficking and prostitution inaccessible by default on
11 Internet-enabled devices will do more to curb the demand for such offenses more so than other
12 measure since the inception of the Internet.

13 (6) Live adult entertainment establishments contribute to a culture that tolerates the sexual
14 objectification and exploitation of women, and contribute to the need for community-based services
15 to respond to victims of all forms of sexual exploitation, including sexual harassment, trafficking,
16 and sexual assault.

17 (7) Crime statistics show that the presence of live adult entertainment establishments may
18 result in an increase in prohibited secondary sexual activities, such as prostitution, and other crimes
19 in the surrounding community.

20 (8) The general assembly is generally opposed to online censorship unless the content is
21 injurious to children or promotes human trafficking - only then is the general assembly for limited
22 censorship.

23 (9) Retailers of Internet-enabled devices market their products as being family-friendly
24 when they are often not, constituting unfair trade practices.

25 SECTION 2. Legislative findings - Upholding community standards of decency.

26 The general assembly finds that:

27 Some government and non-government groups in Rhode Island have been either working
28 to uphold community standards of decency or to combat sex-related offenses that could be
29 prospective beneficiaries of the grant fund under § 6-13.4-7. These include:

30 Rhode Island Human Trafficking Task Force, Sex Trafficking Law Enforcement Task
31 Force, RI Advocacy for Children, Children's Advocacy Center of Bristol County, Day One, Plan
32 USA, Because I am a Girl, Crossroads RI, Sojourner House Inc., Crossroads RI, Rhode Island
33 Coalition for the Homeless, Holy Family Home for Mothers and Children, Advent House Inc.,
34 Domestic Violence Resource Center of South County, Crossroads Family Shelter, House of Hope

1 Community Development Corporation, Lucy's Hearth, Community Care Alliance, Women's
2 Resource Center Newport County, Warm Shelter Inc., Children's Shelter-Blackstone, Welcome
3 House of South County, Women's Resource Center, Amos House, Urban League of RI, Crossroads
4 Rhode Island, Providence Rescue Mission; Crossroads RI (Providence); Rhode Island Coalition for
5 the Homeless (Pawtucket); Crossroads RI (West Warwick); Crossroads Family Shelter (Seekonk);
6 House of Hope Community Development Corporation (Warwick); Lucy's Hearth (Middletown);
7 Advent House Inc. (Providence); Holy Family Home for Mothers and Children (Providence);
8 Community Care Alliance (Woonsocket); Children's Shelter-Blackstone (Pawtucket); Verizon
9 Company Homeless Shelter (Pawtucket); Urban League of RI (Providence); Providence Rescue
10 Mission (Providence); Warm Shelter Inc. (Westerly); Welcome House of South County
11 (Wakefield); Amos House (Providence); Sojourner House Inc. (Providence); East Bay Coalition
12 For Homeless (Riverside); Crossroads Rhode Islands (North Kingstown); Rhode Island Family
13 Shelter (Warwick); Tanner House (Providence); Blackstone Valley Advocacy Center (Central
14 Falls,); McAuley House (Providence); Camp Street Community Ministries (Providence); WARM
15 Center Administration (Westerly); Emmanuel Men Shelter (Providence); Domestic Violence
16 Resource Center of South County (Wakefield); Elizabeth Buffum Chace Center (Warwick);
17 Women's Resource Center Newport County Office (Newport); The Salvation Army of Pawtucket,
18 RI (Pawtucket); YWCA (Woonsocket); Family Resource Center (Attleboro); Elizabeth Buffum
19 Chace House (Warwick); Harvest Community Church (Woonsocket); Good Neighbors
20 (Riverside); McAuley Village (Providence) ; Operation Stand Down (Johnston); The Salvation
21 Army of Newport , RI (Newport); St Paul's Church (Pawtucket); Providence In-Town Churches
22 Association (Providence); Women's Resource Center (Warren); McAuley Ministries (Providence);
23 Rhode Island Veterans' Home Community Living Center (Providence); Habitat For Humanity of
24 Rhode Island Greater Providence (Providence); St Joseph's Rectory (Newport); YWCA Greater RI
25 (Central Falls); Habitat for Humanity for Rhode Island South County (Charlestown); Community
26 Care Alliance (Woonsocket); Cumberland Manor (Cumberland); Project Hope (Providence); The
27 Salvation Army of Providence, RI (Providence); North American Family institute (Warwick);
28 Eastbay Community Action Program (Tiverton); Church Community Housing Corporation
29 (Newport); Catholic social services (Fall River); Rebuilding Together (Providence); North
30 American Family Insurance (Lincoln); Community Care Alliance (Woonsocket); Access
31 Emergency Shelter (Danielson); Galilee Mission (Narragansett); Always Home (Mystic);
32 Pawtucket Central Falls Development (Pawtucket); North American Family Institute (Pawtucket);
33 Community Care Alliance (Woonsocket); North Kingstown Food Pantry (North Kingstown);
34 Blackstone Valley Emergency Food Center (Pawtucket); Housing Network of Rhode Island

1 (Pawtucket); Parents Without Partners (Providence); Corp For Supportive Housing (Providence);
2 Habitat For Humanity-West Bay (Warwick); Operation Stand Down (West Warwick); Joe's Sock
3 Fund For Homeless (Attleboro); Neighborworks (Woonsocket); Council of Churches (Attleboro);
4 and other similar situated groups and individuals.

5 SECTION 3. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
6 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

7 CHAPTER 13.4

8 INDECENT DECEPTIVE TRADE PRACTICES ACT

9 **6-13.4-1. Short title.**

10 This chapter shall be known and may be cited as the "Indecent Deceptive Trade Practices
11 Act."

12 **6-13.4-2. Definitions.**

13 As used in this chapter:

14 (1) "Adult" has the same meaning as in § 11-67.1-2.

15 (2) "Cellular telephone" means a communication device containing a unique electronic
16 serial number that is programmed into its computer chip by its manufacturer and whose operation
17 is dependent on the transmission of that electronic serial number along with a mobile identification
18 on number, which is assigned by the cellular telephone carrier, in the form of radio signals through
19 cell sites and mobile switching stations.

20 (3) "Child pornography" has the same meaning as in § 11-9-1.3(c)(1) and 18 U.S.C. § 2256.

21 (4) "Computer" has the meaning given in 18 U.S.C. § 1030.

22 (5) "Consumer" means an individual who purchases or leases for personal, family, or
23 household purposes an Internet-enabled device.

24 (6) "Data communications device" means an electronic device that receives electronic
25 information from one source and transmits or routes it to another, including, but not limited to, any
26 such bridge, router, switch, or gateway.

27 (7) "Filter" means a digital blocking capability, hardware or software that restricts or blocks
28 Internet access to websites, electronic mail, chat or other Internet-based communications based on
29 category, site, or content, and the term means a digital blinder rack that can be deactivated by a
30 retailer upon the satisfaction of certain nominal conditions.

31 (8) "Human trafficking" means the commission of an offense in violation of §§ 11-67.1-3
32 through 11-67.1-7.

33 (9) "Indecent for minors" has the same meaning as in § 11-31-10.

34 (10) "Internet" has the same meaning as provided in 31 U.S.C. § 5362.

1 (11) "Internet-enabled device" means a cellular telephone, computer, data communications
2 device, or other product manufactured, distributed, or sold in this state that provides Internet access
3 or plays a material role in distributing content on the Internet.

4 (12) " Internet service provider" has the same meaning as in § 39-2-20.1.

5 (13) "Knowingly" has the same meaning as ascribed in § 11-31-1.

6 (14) "Live adult entertainment establishment" means a business in which, as the major
7 activity, customers congregate primarily for the purpose of viewing or associating with employees
8 who display anatomical areas designed to provide sexual stimulation or sexual gratification; human
9 genitals, the immediate pubic region, or pubic hair; buttocks to the extent of exposing the immediate
10 anal area; female breasts to points below the nipples; male genitals in a state of erection, even if
11 covered with opaque clothing; all of the above anatomical areas when covered only by transparent
12 or diaphanous clothing.

13 (15) "Minor" means a person under the age of eighteen (18) years.

14 (16) "Non-government group" means a nonprofit organization exempt from federal income
15 taxation under Section 501(c)(3), Internal Revenue Code of 1986, having as a primary purpose of
16 ending sexual violence in this state, or programs for the prevention of sexual violence, outreach
17 programs, and technical assistance to and support of youth and rape crisis centers working to
18 prevent sexual violence. The term also includes individuals and/or any group that is doing anything
19 to uphold community standards of decency.

20 (17) "Nude" means nudity as defined in § 11-31-10.

21 (18) "Obscene" has the same meaning and is established by the criteria provided in § 11-
22 31-1 and the term includes websites that:

23 (i) Are known to facilitate human trafficking or prostitution; and

24 (ii) Display or depict images that are indecent to minors or that constitute sado-masochistic
25 abuse, sexual conduct, or, revenge pornography.

26 (19) "Personal identification information" means any information that identifies a person,
27 including an individual's photograph, social security number, driver identification number, name,
28 email address, address or telephone number.

29 (20) "Prostitution" means an act in violation of § 11-34.1-2.

30 (21) "Retailer" means any person who regularly engages in the manufacturing, sale, offer
31 for sale or lease of Internet-enabled device or services in this state that make content accessible on
32 the Internet. The term includes Internet service providers and suppliers and manufacturers of
33 Internet-enabled devices that materially play a role in distributing content on the Internet or that
34 make content accessible that are subject to the jurisdiction of this state.

1 (22) "Revenge pornography distribution" means conduct in violation of § 11-64-3.

2 (23) "Sexual conduct" shall have the same meaning as ascribed in § 11- 31-1.

3 (24) "Social media website" means an Internet website or application that enables users to
4 communicate with each other by posting information, comments, messages, or images and that
5 meets all of the following requirements:

6 (i) Is open to the public;

7 (ii) Has more than seventy-five million (75,000,000) subscribers;

8 (iii) From its inception, has not been specifically affiliated with any one religion or political
9 party; and

10 (iv) Provides a means for the website's users to report obscene materials and has in place
11 procedures for evaluating those reports and removing obscene material.

12 **6-13.4-3. Continuing duties of retailers of internet-enabled devices.**

13 (a) A retailer that manufactures, sells, offers for sale, leases, or distributes an Internet-
14 enabled device shall ensure that the product is equipped with an active and operating filter prior to
15 sale that blocks by default websites that:

16 (1) Are known to facilitate human trafficking or prostitution; and

17 (2) Display child pornography, revenge pornography, or obscene material indecent for
18 minors.

19 (b) A retailer that manufactures, sells, offers for sale, leases, or distributes an Internet-
20 enabled device shall:

21 (1) Make reasonable and ongoing efforts to ensure that a product's filter functions properly;

22 (2) Establish a reporting mechanism, such as a website or call center, to allow a consumer
23 to report unblocked websites displaying content described in subsection (a) of this section or to
24 report blocked websites that are not displaying content described in subsection (a) of this section;

25 (3) Report child pornography received through the reporting mechanism to the National
26 Center For Missing and Exploited Children's cybertipline in accordance with 18 U .S.C. § 2258a;

27 (4) Not block access to websites that:

28 (i) Are social media websites that provide a means for the website's users to report obscene
29 materials and have in place procedures for evaluating those reports and removing obscene material;

30 (ii) Serve primarily as a search engine; or

31 (iii) Display complete movies that meet the qualifications for a "G," "PG," "PG-13," or "R"
32 rating by the Classification and Ratings Administration.

33 (c) Except as provided by subsection (d) of this section, a retailer shall not provide to a
34 consumer, methods, source code, or other operating instructions for deactivating a product's filter.

1 (d) A retailer of an Internet-enabled device shall deactivate the filter after a consumer:
2 (1) Requests that the capability be disabled;
3 (2) Presents personal identification information to verify that the consumer is eighteen (18)
4 years of age or older;
5 (3) Acknowledges receiving a warning regarding the potential danger of deactivating the
6 filter; and
7 (4) Pays a one-time twenty dollar (\$20.00) filter deactivation fee to be remitted quarterly
8 to the division of taxation to be deposited into the Rhode Island human trafficking and child
9 exploitation prevention grant fund established pursuant to § 6-13.4-7.

10 (e) The filter deactivation fee of this section is not content based but collected and remitted
11 to the division of taxation to help the state bear the costs of upholding community standards of
12 decency and of combating sex-related offenses, and is to be used as set forth in § 6-13.4-7. The
13 division of taxation shall proscribe the administration, payment, collection and enforcement of the
14 fee imposed by this section. The division of taxation may annually adjust the one-time fee to
15 account for inflation.

16 (f) Nothing contained herein shall be construed to prevent a retailer of an Internet-enabled
17 device from charging a reasonable separate fee to deactivate the filter, which it may retain for profit.

18 (g) The attorney general shall prepare and make available to retailers a form that includes
19 all content that shall be in the warning described in subsection (d)(3) of this section.

20 (h) Nothing contained herein shall be construed to require a retailer of an Internet-enabled
21 device to create a database or registry that contains the names or personal identification information
22 of adults who knowingly chose to deactivate a product's filter. A retailer of an Internet-enabled
23 device shall take due care to protect the privacy rights of adult consumers and shall not disclose the
24 names or personal identification information of an adult consumer who decided to deactivate a
25 product's filter, except pursuant to a court order.

26 **6-13.4-4. Civil action; Deceptive trade practice.**

27 (a) If the filter blocks a website that is not displaying content described in § 6-13.4-3 and
28 the block is reported to a call center or reporting mechanism, the website shall be unblocked within
29 a reasonable time, but in no event later than five (5) business days after the block is first reported.
30 A consumer may seek judicial relief to unblock a website that was wrongfully blocked by the filter.
31 The prevailing party in a civil litigation may seek attorney fees, costs, and other forms of relief.

32 (b) If a retailer of an Internet-enabled device is unresponsive to a report of a website
33 displaying content described in § 6-13.4-3 that has breached the filter, the attorney general or a
34 consumer may file a civil suit. The attorney general or a consumer may seek damages of up to five

1 hundred dollar (\$500) for each website that was reported but not subsequently blocked. The
2 prevailing party in the civil action may seek attorneys' fees, costs, and other forms of relief.

3 (c) A retailer violating the provisions of this chapter shall have engaged in deceptive trade
4 practice in violation of chapter 13.1 of title 6.

5 (d) Nothing contained herein shall be construed to limit the dissemination of content of
6 material or to filter content to institutions or organizations having law enforcement, scientific or
7 educational justification for displaying the material.

8 **6-13.4-5. Unlawful acts; Penalties.**

9 (a) A retailer of an Internet-enabled device is guilty of an offense if it knowingly:

10 (1) Sells an Internet-enabled device without activated blocking capability that at least
11 makes an attempt to block by default websites that display content described in § 6-13.4-3; or

12 (2) Violates the provisions of this chapter.

13 (b) A retailer shall pay a civil penalty of not more than one thousand dollars (\$1,000) for a
14 first violation and no more than two thousand five hundred dollars (\$2,500) for any subsequent
15 violations.

16 (c) A retailer that commits subsequent violations shall be guilty of a misdemeanor.

17 (d) A retailer that commits an offense under subsection (a) of this section has engaged in
18 an unfair or deceptive trade practice in violation of chapter 13.1 of title 6.

19 (e) Only the attorney general may enforce this section.

20 **6-13.4-6. Exemptions.**

21 (a) Nothing contained herein shall be construed to apply to:

22 (1) An occasional sale of an Internet-enabled device by a person that is not regularly
23 engaged in the trade business of selling Internet-enabled devices;

24 (2) Products produced or sold before enactment; and

25 (3) Independent third-party routers that are not affiliated with an Internet service provider.

26 (b) This act does not apply to a retailer that manufactures, sells, offers for sale, leases, or
27 distributes an Internet-enabled device that is not subject to the jurisdiction of this state.

28 **6-13.4-7. Rhode Island human trafficking and child exploitation prevention grant**
29 **fund.**

30 (a) There is established in the general treasurer a special fund to be known as the "Rhode
31 Island Human Trafficking and Child Exploitation Prevention Grant Fund" (the "fund") to be
32 administered by the attorney general, or designee.

33 (b) The purpose of the fund is:

34 (1) To promote the development throughout the state of locally-based and supported

1 nonprofit programs for the survivors of sexual-related offenses and to support the quality of
2 services provided;

3 (2) To empower any government and, especially, non-government groups working to
4 uphold community standards of decency, to protect children, to strengthen families, or to develop,
5 expand, or to prevent or offset the costs of sex-related offenses; and

6 (3) Not to promote a culture of perpetual victimhood but to maximize human flourishing
7 and to protect the public's safety, health, and welfare.

8 (c) The purpose can be interpreted broadly to meet the evolving needs of the state.

9 (d) The fund shall consist of:

10 (1) Deactivation fees collected by the department of taxation from retailers of Internet-
11 enabled devices pursuant to § 6-13.4-3.

12 (2) Admission fees collected by the department of taxation from live adult entertainment
13 establishments pursuant to § 6-13.4-7; and

14 (3) Any other appropriations, gifts, grants, donations, and bequests.

15 (e) Money deposited into the fund may be used only by:

16 (1) The attorney general, or designee, for grants to government and, especially, non-
17 government entities and individuals that are working to uphold community standards of decency,
18 to protect children, to strengthen families, or to develop, expand, or strengthen programs for victims
19 of human trafficking or child exploitation, including providing grants for:

20 (i) The needs of the council on human trafficking, established by § 11-67.1-19;

21 (ii) The needs of any human trafficking task force or human trafficking coalition based in
22 Rhode Island;

23 (iii) The needs of victim compensation;

24 (iv) Services to help women with substance abuse problems stay clean;

25 (v) Counselors and victim advocates who are trained to assist victims of domestic violence
26 and sexual abuse;

27 (vi) Shelters for women, particularly those who have been exposed to prostitution or sex
28 trafficking;

29 (vii) Research-based organizations;

30 (viii) Faith-based organizations working to uphold community standards of decency and
31 assisting victims of human trafficking or other sex offenses;

32 (xi) Child advocacy centers;

33 (x) Organizations that provide legal advocacy to abused, neglected, and at-risk children;

34 (xi) Physical and mental health services;

- 1 (xii) Temporary and permanent housing placement;
2 (xiii) Employment, placement, education, training;
3 (xiv) Independent school districts;
4 (xv) Family counseling and therapy;
5 (xvi) Law enforcement;
6 (xvii) Musical, writing, design, cinematic, or pictorial creative art projects that promote
7 decency;
8 (xviii) Regional nonprofit providers of civil legal services to provide legal assistance for
9 sexual assault victims;
10 (xix) Grants to support technology in rape crisis centers;
11 (xx) Sexual violence awareness and prevention campaigns; and
12 (xxi) Scholarships for students demonstrating outstanding character or leadership skills.
13 (f) Any other state agency or organization for the purpose of conducting human trafficking
14 enforcement programs or to uphold community standards of decency.
15 (g) Notwithstanding any law to the contrary, interest accruing on investments and deposits
16 of the fund shall be credited to the fund and shall not revert to the general fund, and shall be carried
17 forward into the subsequent fiscal year.
18 (h) Any balance in the fund remaining unexpected at the end of a fiscal year shall not revert
19 to the general fund but shall be carried forward into the subsequent fiscal year.
20 (i) The attorney general, or designee, shall evaluate activities conducted under this section
21 each year and, on or before February 15, submit an annual report containing the evaluation to the
22 senate president and speaker of the house of representatives. The report shall include:
23 (1) The amount of filter deactivation fees received pursuant to § 6-13.4-3;
24 (2) The amount of admission fees received pursuant to § 6-13.4-7;
25 (3) The manner in which the funds in the account were distributed; and
26 (4) The manner in which each entity receiving a grant used the grant money.
27 (j) The attorney general, or designee, may by rule;
28 (1) Determine eligibility requirements for any grant awarded from the fund;
29 (2) Require a grant recipient to offer minimum services for a period of time before
30 receiving a grant and to continue to offer minimum services during the grant period; and
31 (3) Require a grant recipient to submit financial and programmatic reports.
32 (k) The attorney general, or designee, shall not spend more than ten percent (10%) of the
33 available funds on the administration of the fund.

34 **6-13.4-8. Live adult entertainment establishment admission fee.**

1 (a) A five dollar (\$5.00) admission fee is imposed for each entry by each customer admitted
2 to a live adult entertainment establishment to be remitted quarterly to the department of taxation
3 and deposited into the Rhode Island human trafficking and child exploitation prevention grant fund
4 established pursuant to § 6-13.4-7. The department of taxation shall prescribe the method of
5 administration, payment, collection and enforcement of the fee imposed by this section.

6 (b) The admission fee is not content based but imposed and remitted to the state to offset
7 secondary harmful effects and to help the state uphold community standards of decency and to
8 combat sex-related crimes and is to be used as set forth in § 6-13.4-7.

9 (c) The admission fee is in addition to all other taxes imposed on the business that offers
10 adult entertainment.

11 (d) Each live adult entertainment establishment shall record daily in the manner required
12 by the department of taxation the number of customers admitted to the business. The business shall
13 maintain the records for the period required by the department of taxation and make the records
14 available only for inspection and audit on request by the department of taxation. The records shall
15 not contain the names or personal information of any of the customers.

16 (e) This section does not require a live adult entertainment establishment to impose a tax
17 on a customer of the business. A business has the discretion to determine the manner in which the
18 business derives the money required to pay the tax imposed under this section.

19 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
INDECENT DECEPTIVE TRADE PRACTICES

1 This act would require retailers of Internet-enabled devices to provide a filter for obscene
2 material. Provides that users may deactivate the filter upon payment of a twenty dollar (\$20.00)
3 fee. Failure to provide the filter would be a deceptive trade practice. Penalties are provided for
4 violation of the provisions. This act would also create a fund for grants administered by the attorney
5 general to be provided to groups working to uphold community standards and to assist survivors of
6 sex-related offenses.

7 This act would take effect upon passage.

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