
ENGROSSED SUBSTITUTE SENATE BILL 5820

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Energy, Telecommunications & Utilities
(originally sponsored by Senators Sutherland, Finkbeiner, Snyder, Smith
and Quigley)

Read first time 03/01/95.

1 AN ACT Relating to unauthorized use of telecommunication and
2 subscription video services; amending RCW 9A.56.010, 9A.56.220,
3 9A.56.230, 9A.56.250, and 9A.82.010; adding new sections to chapter
4 9A.56 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9A.56.010 and 1987 c 140 s 1 are each amended to read
7 as follows:

8 The following definitions are applicable in this chapter unless the
9 context otherwise requires:

10 (1) "Appropriate lost or misdelivered property or services" means
11 obtaining or exerting control over the property or services of another
12 which the actor knows to have been lost or mislaid, or to have been
13 delivered under a mistake as to identity of the recipient or as to the
14 nature or amount of the property;

15 (2) "By color or aid of deception" means that the deception
16 operated to bring about the obtaining of the property or services; it
17 is not necessary that deception be the sole means of obtaining the
18 property or services;

1 (3) "Access device" means any card, plate, code, account number, or
2 other means of account access that can be used alone or in conjunction
3 with another access device to obtain money, goods, services, or
4 anything else of value, or that can be used to initiate a transfer of
5 funds, other than a transfer originated solely by paper instrument;

6 (4) "Deception" occurs when an actor knowingly:

7 (a) Creates or confirms another's false impression which the actor
8 knows to be false; or

9 (b) Fails to correct another's impression which the actor
10 previously has created or confirmed; or

11 (c) Prevents another from acquiring information material to the
12 disposition of the property involved; or

13 (d) Transfers or encumbers property without disclosing a lien,
14 adverse claim, or other legal impediment to the enjoyment of the
15 property, whether that impediment is or is not valid, or is or is not
16 a matter of official record; or

17 (e) Promises performance which the actor does not intend to perform
18 or knows will not be performed.

19 (5) "Deprive" in addition to its common meaning means to make
20 unauthorized use or an unauthorized copy of records, information, data,
21 trade secrets, or computer programs;

22 (6) "Obtain control over" in addition to its common meaning, means:

23 (a) In relation to property, to bring about a transfer or purported
24 transfer to the obtainer or another of a legally recognized interest in
25 the property; or

26 (b) In relation to labor or service, to secure performance thereof
27 for the benefits of the obtainer or another;

28 (7) "Wrongfully obtains" or "exerts unauthorized control" means:

29 (a) To take the property or services of another;

30 (b) Having any property or services in one's possession, custody or
31 control as bailee, factor, pledgee, servant, attorney, agent, employee,
32 trustee, executor, administrator, guardian, or officer of any person,
33 estate, association, or corporation, or as a public officer, or person
34 authorized by agreement or competent authority to take or hold such
35 possession, custody, or control, to secrete, withhold, or appropriate
36 the same to his or her own use or to the use of any person other than
37 the true owner or person entitled thereto; or

38 (c) Having any property or services in one's possession, custody,
39 or control as partner, to secrete, withhold, or appropriate the same to

1 his or her use or to the use of any person other than the true owner or
2 person entitled thereto, where such use is unauthorized by the
3 partnership agreement;

4 (8) "Owner" means a person, other than the actor, who has
5 possession of or any other interest in the property or services
6 involved, and without whose consent the actor has no authority to exert
7 control over the property or services;

8 (9) "Receive" includes, but is not limited to, acquiring title,
9 possession, control, or a security interest, or any other interest in
10 the property;

11 (10) "Services" includes, but is not limited to, labor,
12 professional services, transportation services, electronic computer
13 services, the supplying of hotel accommodations, restaurant services,
14 entertainment, the supplying of equipment for use, and the supplying of
15 commodities of a public utility nature such as gas, electricity, steam,
16 and water;

17 (11) "Stolen" means obtained by theft, robbery, or extortion;

18 (12) "Subscription television service" means cable or encrypted
19 video and related audio and data services intended for viewing on a
20 home television by authorized members of the public only, who have
21 agreed to pay a fee for the service. Subscription services include but
22 are not limited to those video services presently delivered by coaxial
23 cable, fiber optic cable, terrestrial microwave, television broadcast,
24 and satellite transmission;

25 (13) "Telecommunication device" means (a) any type of instrument,
26 device, machine, or equipment that is capable of transmitting or
27 receiving telephonic or electronic communications; or (b) any part of
28 such an instrument, device, machine, or equipment, or any computer
29 circuit, computer chip, electronic mechanism, or other component, that
30 is capable of facilitating the transmission or reception of telephonic
31 or electronic communications;

32 (14) "Telecommunication service" includes any service other than
33 subscription television service provided for a charge or compensation
34 to facilitate the transmission, transfer, or reception of a telephonic
35 communication or an electronic communication;

36 (15) Value. (a) "Value" means the market value of the property or
37 services at the time and in the approximate area of the criminal act.

1 (b) Whether or not they have been issued or delivered, written
2 instruments, except those having a readily ascertained market value,
3 shall be evaluated as follows:

4 (i) The value of an instrument constituting an evidence of debt,
5 such as a check, draft, or promissory note, shall be deemed the amount
6 due or collectible thereon or thereby, that figure ordinarily being the
7 face amount of the indebtedness less any portion thereof which has been
8 satisfied;

9 (ii) The value of a ticket or equivalent instrument which evidences
10 a right to receive transportation, entertainment, or other service
11 shall be deemed the price stated thereon, if any; and if no price is
12 stated thereon, the value shall be deemed the price of such ticket or
13 equivalent instrument which the issuer charged the general public;

14 (iii) The value of any other instrument that creates, releases,
15 discharges, or otherwise affects any valuable legal right, privilege,
16 or obligation shall be deemed the greatest amount of economic loss
17 which the owner of the instrument might reasonably suffer by virtue of
18 the loss of the instrument.

19 (c) Whenever any series of transactions which constitute theft,
20 would, when considered separately, constitute theft in the third degree
21 because of value, and said series of transactions are a part of a
22 common scheme or plan, then the transactions may be aggregated in one
23 count and the sum of the value of all said transactions shall be the
24 value considered in determining the degree of theft involved.

25 (d) Whenever any person is charged with possessing stolen property
26 and such person has unlawfully in his possession at the same time the
27 stolen property of more than one person, then the stolen property
28 possessed may be aggregated in one count and the sum of the value of
29 all said stolen property shall be the value considered in determining
30 the degree of theft involved.

31 (e) Property or services having value that cannot be ascertained
32 pursuant to the standards set forth above shall be deemed to be of a
33 value not exceeding two hundred and fifty dollars;

34 (~~((13))~~) (16) "Shopping cart" means a basket mounted on wheels or
35 similar container generally used in a retail establishment by a
36 customer for the purpose of transporting goods of any kind;

37 (~~((14))~~) (17) "Parking area" means a parking lot or other property
38 provided by retailers for use by a customer for parking an automobile
39 or other vehicle.

1 **Sec. 2.** RCW 9A.56.220 and 1989 c 11 s 1 are each amended to read
2 as follows:

3 (1) A person is guilty of theft of ~~((cable))~~ subscription
4 television services if(~~(+~~

5 ~~(a))~~, with intent to avoid payment of the lawful charge ~~((for any~~
6 communication)) of a subscription television service ~~((of a cable~~
7 system)), he or she:

8 ~~((i) Tamper with the equipment of the cable system, whether by~~
9 mechanical, electrical, acoustical, or other means; or

10 ~~(ii) Knowingly misrepresents a material fact; or~~

11 ~~(iii) Uses any other artifice, trick, deception, code, or other~~
12 device; and

13 ~~(b) He or she wrongfully obtains cable communication services for~~
14 himself or herself or another.

15 ~~(2) RCW 9A.56.220 through 9A.56.250 do not apply to the~~
16 interception or receipt by any individual or the assisting (including
17 the manufacture or sale), of such interception or receipt of any
18 satellite-transmitted programming for private use.)

19 (a) Obtains or attempts to obtain subscription television service
20 from a subscription television service company by trick, artifice,
21 deception, use of a device or decoder, or other fraudulent means
22 without authority from the company providing the service;

23 (b) Assists or instructs a person in obtaining or attempting to
24 obtain subscription television service without authority of the company
25 providing the service;

26 (c) Makes or maintains a connection or connections, whether
27 physical, electrical, mechanical, acoustical, or by other means, with
28 cables, wires, components, or other devices used for the distribution
29 of subscription television services without authority from the company
30 providing the services;

31 (d) Makes or maintains a modification or alteration to a device
32 installed with the authorization of a subscription television service
33 company for the purpose of interception or receiving a program or other
34 service carried by the company that the person is not authorized by the
35 company to receive; or

36 (e) Possesses without authority a device designed in whole or in
37 part to receive subscription television services offered for sale by
38 the subscription television service company, regardless of whether the
39 program or services are encoded, filtered, scrambled, or otherwise made

1 unintelligible, or to perform or facilitate the performance of any
2 other acts set out in (a) through (d) of this subsection for the
3 reception of subscription television services without authority.

4 ~~((3))~~ (2) Theft of ((cable)) subscription television services is
5 a gross misdemeanor.

6 **Sec. 3.** RCW 9A.56.230 and 1985 c 430 s 2 are each amended to read
7 as follows:

8 (1) A person is guilty of unlawful sale of ~~((cable))~~ subscription
9 television services if, with intent to avoid payment or to facilitate
10 the avoidance of payment of the lawful charge for any ((communications
11 service of a cable system)) subscription television service, he or she
12 ((offers for sale or otherwise makes available any telecommunications
13 decoder or descrambler that defeats a mechanism of electronic signal
14 encryption, or that restricts delivery of individually addressed
15 switching imposed by the cable system.)), without authorization from
16 the subscription television service company:

17 (a) Publishes or advertises for sale a plan for a device that is
18 designed in whole or in part to receive subscription television or
19 services offered for sale by the subscription television service
20 company, regardless of whether the programming or services are encoded,
21 filtered, scrambled, or otherwise made unintelligible;

22 (b) Advertises for sale or lease a device or kit for a device
23 designed in whole or in part to receive subscription television
24 services offered for sale by the subscription television service
25 company, regardless of whether the programming or services are encoded,
26 filtered, scrambled, or otherwise made unintelligible; or

27 (c) Manufactures, imports into the state of Washington,
28 distributes, sells, leases, or offers for sale or lease a device, plan,
29 or kit for a device designed in whole or in part to receive
30 subscription television services offered for sale by the subscription
31 television service company, regardless of whether the programming or
32 services are encoded, filtered, scrambled, or otherwise made
33 unintelligible.

34 (2) Unlawful sale of ~~((cable))~~ subscription television services is
35 a ((gross misdemeanor)) class C felony.

36 **Sec. 4.** RCW 9A.56.250 and 1985 c 430 s 4 are each amended to read
37 as follows:

1 (1) In addition to the criminal penalties provided in RCW 9A.56.220
2 and 9A.56.230, there is created a civil cause of action for theft of
3 ~~((cable))~~ subscription television services and for unlawful sale of
4 ~~((cable))~~ subscription television services.

5 (2) ~~((The prevailing party may recover actual damages, reasonable
6 attorneys' fees, and costs.~~

7 ~~(3))~~ A person who sustains injury to his or her person, business,
8 or property by an act described in RCW 9A.56.220 or 9A.56.230 may file
9 an action in superior court for recovery of damages and the costs of
10 the suit, including reasonable investigative and attorneys' fees and
11 costs.

12 (3) Upon finding a violation of RCW 9A.56.220 or 9A.56.230, in
13 addition to the remedies described in this section, the court may
14 impose a civil penalty not exceeding twenty-five thousand dollars.

15 (4) The superior court may grant temporary and final injunctions on
16 such terms as it deems reasonable to prevent or restrain violations of
17 RCW 9A.56.220 and 9A.56.230.

18 **Sec. 5.** RCW 9A.82.010 and 1994 c 218 s 17 are each amended to read
19 as follows:

20 Unless the context requires the contrary, the definitions in this
21 section apply throughout this chapter.

22 (1) "Creditor" means a person making an extension of credit or a
23 person claiming by, under, or through a person making an extension of
24 credit.

25 (2) "Debtor" means a person to whom an extension of credit is made
26 or a person who guarantees the repayment of an extension of credit or
27 in any manner undertakes to indemnify the creditor against loss
28 resulting from the failure of a person to whom an extension is made to
29 repay the same.

30 (3) "Extortionate extension of credit" means an extension of credit
31 with respect to which it is the understanding of the creditor and the
32 debtor at the time the extension is made that delay in making repayment
33 or failure to make repayment could result in the use of violence or
34 other criminal means to cause harm to the person, reputation, or
35 property of any person.

36 (4) "Extortionate means" means the use, or an express or implicit
37 threat of use, of violence or other criminal means to cause harm to the
38 person, reputation, or property of any person.

1 (5) "To collect an extension of credit" means to induce in any way
2 a person to make repayment thereof.

3 (6) "To extend credit" means to make or renew a loan or to enter
4 into an agreement, tacit or express, whereby the repayment or
5 satisfaction of a debt or claim, whether acknowledged or disputed,
6 valid or invalid, and however arising, may or shall be deferred.

7 (7) "Repayment of an extension of credit" means the repayment,
8 satisfaction, or discharge in whole or in part of a debt or claim,
9 acknowledged or disputed, valid or invalid, resulting from or in
10 connection with that extension of credit.

11 (8) "Dealer in property" means a person who buys and sells property
12 as a business.

13 (9) "Stolen property" means property that has been obtained by
14 theft, robbery, or extortion.

15 (10) "Traffic" means to sell, transfer, distribute, dispense, or
16 otherwise dispose of stolen property to another person, or to buy,
17 receive, possess, or obtain control of stolen property, with intent to
18 sell, transfer, distribute, dispense, or otherwise dispose of the
19 property to another person.

20 (11) "Control" means the possession of a sufficient interest to
21 permit substantial direction over the affairs of an enterprise.

22 (12) "Enterprise" includes any individual, sole proprietorship,
23 partnership, corporation, business trust, or other profit or nonprofit
24 legal entity, and includes any union, association, or group of
25 individuals associated in fact although not a legal entity, and both
26 illicit and licit enterprises and governmental and nongovernmental
27 entities.

28 (13) "Financial institution" means any bank, trust company, savings
29 and loan association, savings bank, mutual savings bank, credit union,
30 or loan company under the jurisdiction of the state or an agency of the
31 United States.

32 (14) "Criminal profiteering" means any act, including any
33 anticipatory or completed offense, committed for financial gain, that
34 is chargeable or indictable under the laws of the state in which the
35 act occurred and, if the act occurred in a state other than this state,
36 would be chargeable or indictable under the laws of this state had the
37 act occurred in this state and punishable as a felony and by
38 imprisonment for more than one year, regardless of whether the act is
39 charged or indicted, as any of the following:

1 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
2 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
3 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
4 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
5 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
6 9A.56.080;
7 (f) Unlawful sale of subscription television services, as defined
8 in RCW 9A.56.230;
9 (g) Theft of telecommunication services or unlawful manufacture of
10 a telecommunication device, as defined in sections 6 and 7 of this act;
11 (h) Child selling or child buying, as defined in RCW 9A.64.030;
12 (~~(g)~~) (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020,
13 9A.68.040, and 9A.68.050;
14 (~~(h)~~) (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and
15 9.46.217;
16 (~~(i)~~) (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
17 (~~(j)~~) (l) Extortionate extension of credit, as defined in RCW
18 9A.82.020;
19 (~~(k)~~) (m) Advancing money for use in an extortionate extension of
20 credit, as defined in RCW 9A.82.030;
21 (~~(l)~~) (n) Collection of an extortionate extension of credit, as
22 defined in RCW 9A.82.040;
23 (~~(m)~~) (o) Collection of an unlawful debt, as defined in RCW
24 9A.82.045;
25 (~~(n)~~) (p) Delivery or manufacture of controlled substances or
26 possession with intent to deliver or manufacture controlled substances
27 under chapter 69.50 RCW;
28 (~~(o)~~) (q) Trafficking in stolen property, as defined in RCW
29 9A.82.050;
30 (~~(p)~~) (r) Leading organized crime, as defined in RCW 9A.82.060;
31 (~~(q)~~) (s) Money laundering, as defined in RCW 9A.83.020;
32 (~~(r)~~) (t) Obstructing criminal investigations or prosecutions in
33 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
34 9A.76.070, or 9A.76.180;
35 (~~(s)~~) (u) Fraud in the purchase or sale of securities, as defined
36 in RCW 21.20.010;
37 (~~(t)~~) (v) Promoting pornography, as defined in RCW 9.68.140;
38 (~~(u)~~) (w) Sexual exploitation of children, as defined in RCW
39 9.68A.040, 9.68A.050, and 9.68A.060;

1 (~~(v)~~) (x) Promoting prostitution, as defined in RCW 9A.88.070 and
2 9A.88.080;

3 (~~(w)~~) (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

4 (~~(x)~~) (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

5 (~~(y)~~) (aa) Assault of a child, as defined in RCW 9A.36.120 and
6 9A.36.130;

7 (~~(z)~~) (bb) A pattern of equity skimming, as defined in RCW
8 61.34.020; or

9 (~~(aa)~~) (cc) Commercial telephone solicitation in violation of RCW
10 19.158.040(1).

11 (15) "Pattern of criminal profiteering activity" means engaging in
12 at least three acts of criminal profiteering, one of which occurred
13 after July 1, 1985, and the last of which occurred within five years,
14 excluding any period of imprisonment, after the commission of the
15 earliest act of criminal profiteering. In order to constitute a
16 pattern, the three acts must have the same or similar intent, results,
17 accomplices, principals, victims, or methods of commission, or be
18 otherwise interrelated by distinguishing characteristics including a
19 nexus to the same enterprise, and must not be isolated events.
20 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
21 any person other than the attorney general or county prosecuting
22 attorney in which one or more acts of fraud in the purchase or sale of
23 securities are asserted as acts of criminal profiteering activity, it
24 is a condition to civil liability under RCW 9A.82.100 that the
25 defendant has been convicted in a criminal proceeding of fraud in the
26 purchase or sale of securities under RCW 21.20.400 or under the laws of
27 another state or of the United States requiring the same elements of
28 proof, but such conviction need not relate to any act or acts asserted
29 as acts of criminal profiteering activity in such civil action under
30 RCW 9A.82.100.

31 (16) "Records" means any book, paper, writing, record, computer
32 program, or other material.

33 (17) "Documentary material" means any book, paper, document,
34 writing, drawing, graph, chart, photograph, phonograph record, magnetic
35 tape, computer printout, other data compilation from which information
36 can be obtained or from which information can be translated into usable
37 form, or other tangible item.

38 (18) "Unlawful debt" means any money or other thing of value
39 constituting principal or interest of a debt that is legally

1 unenforceable in the state in full or in part because the debt was
2 incurred or contracted:

3 (a) In violation of any one of the following:

4 (i) Chapter 67.16 RCW relating to horse racing;

5 (ii) Chapter 9.46 RCW relating to gambling;

6 (b) In a gambling activity in violation of federal law; or

7 (c) In connection with the business of lending money or a thing of
8 value at a rate that is at least twice the permitted rate under the
9 applicable state or federal law relating to usury.

10 (19)(a) "Beneficial interest" means:

11 (i) The interest of a person as a beneficiary under a trust
12 established under Title 11 RCW in which the trustee for the trust holds
13 legal or record title to real property;

14 (ii) The interest of a person as a beneficiary under any other
15 trust arrangement under which a trustee holds legal or record title to
16 real property for the benefit of the beneficiary; or

17 (iii) The interest of a person under any other form of express
18 fiduciary arrangement under which one person holds legal or record
19 title to real property for the benefit of the other person.

20 (b) "Beneficial interest" does not include the interest of a
21 stockholder in a corporation or the interest of a partner in a general
22 partnership or limited partnership.

23 (c) A beneficial interest shall be considered to be located where
24 the real property owned by the trustee is located.

25 (20) "Real property" means any real property or interest in real
26 property, including but not limited to a land sale contract, lease, or
27 mortgage of real property.

28 (21)(a) "Trustee" means:

29 (i) A person acting as a trustee under a trust established under
30 Title 11 RCW in which the trustee holds legal or record title to real
31 property;

32 (ii) A person who holds legal or record title to real property in
33 which another person has a beneficial interest; or

34 (iii) A successor trustee to a person who is a trustee under
35 subsection (21)(a) (i) or (ii) of this section.

36 (b) "Trustee" does not mean a person appointed or acting as:

37 (i) A personal representative under Title 11 RCW;

38 (ii) A trustee of any testamentary trust;

- 1 (iii) A trustee of any indenture of trust under which a bond is
2 issued; or
3 (iv) A trustee under a deed of trust.

4 NEW SECTION. Sec. 6. A new section is added to chapter 9A.56 RCW
5 to read as follows:

6 (1) A person is guilty of theft of telecommunication services if he
7 or she knowingly and with intent to avoid payment:

8 (a) Uses a telecommunication device to obtain telecommunication
9 services without having entered into a prior agreement with a
10 telecommunication service provider to pay for the telecommunication
11 services; or

12 (b) Possesses a telecommunication device.

13 (2) Theft of telecommunication services is a class C felony.

14 NEW SECTION. Sec. 7. A new section is added to chapter 9A.56 RCW
15 to read as follows:

16 (1) A person is guilty of unlawful manufacture of a
17 telecommunication device if he or she knowingly and with intent to
18 avoid payment or to facilitate avoidance of payment:

19 (a) Manufactures, produces, or assembles a telecommunication
20 device;

21 (b) Modifies, alters, programs, or reprograms a telecommunication
22 device to be capable of acquiring or of facilitating the acquisition of
23 telecommunication service without the consent of the telecommunication
24 service provider; or

25 (c) Writes, creates, or modifies a computer program that he or she
26 knows is thereby capable of being used to manufacture a
27 telecommunication device.

28 (2) Unlawful manufacture of a telecommunication device is a class
29 C felony.

30 NEW SECTION. Sec. 8. A new section is added to chapter 9A.56 RCW
31 to read as follows:

32 (1) A person is guilty of unlawful sale of a telecommunication
33 device if he or she sells, leases, exchanges, or offers to sell, lease,
34 or exchange:

35 (a) A telecommunication device, knowing that the purchaser, lessee,
36 or recipient, or a third person, intends to use the device to avoid

1 payment or to facilitate avoidance of payment for telecommunication
2 services; or

3 (b) Any material, including data, computer software, or other
4 information and equipment, knowing that the purchaser, lessee, or
5 recipient, or a third person, intends to use the material to avoid
6 payment or to facilitate avoidance of payment for telecommunication
7 services.

8 (2) Unlawful sale of a telecommunication device is a class C
9 felony.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 9A.56 RCW
11 to read as follows:

12 (1) In addition to the criminal penalties provided in sections 6
13 through 8 of this act, there is created a civil cause of action for
14 theft of telecommunication services, for unlawful manufacture of a
15 telecommunication device, and for unlawful sale of a telecommunication
16 device.

17 (2) A person who sustains injury to his or her person, business, or
18 property by an act described in section 6, 7, or 8 of this act may file
19 an action in superior court for recovery of damages and the costs of
20 the suit, including reasonable investigative and attorneys' fees and
21 costs.

22 (3) Upon finding a violation of section 6, 7, or 8 of this act, in
23 addition to the remedies described in this section, the court may
24 impose a civil penalty not exceeding twenty-five thousand dollars.

25 (4) The superior court may grant temporary and final injunctions on
26 such terms as it deems reasonable to prevent or restrain violations of
27 sections 6 through 8 of this act.

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