## 2 SHB 1182 - S COMM AMD

3 By Committee on Law & Justice

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a bank.

- 5 Strike everything after the enacting clause and insert the 6 following:
- 7 "Sec. 1. RCW 62A.1-201 and 1993 c 230 s 2A-602 and 1993 c 229 s 1 8 are each reenacted and amended to read as follows:
- 9 Subject to additional definitions contained in the subsequent 10 Articles of this Title which are applicable to specific Articles or 11 Parts thereof, and unless the context otherwise requires, in this 12 Title:
- 13 (1) "Action" in the sense of a judicial proceeding includes 14 recoupment, counterclaim, set-off, suit in equity and any other 15 proceedings in which rights are determined.
- 16 (2) "Aggrieved party" means a party entitled to resort to a remedy.
- 17 (3) "Agreement" means the bargain of the parties in fact as found 18 in their language or by implication from other circumstances including 19 course of dealing or usage of trade or course of performance as 20 provided in this Title (RCW 62A.1-205 ((and)), RCW 62A.2-208, and RCW 21 62A.2A-207). Whether an agreement has legal consequences is determined 22 by the provisions of this Title, if applicable; otherwise by the law of 23 contracts (RCW 62A.1-103). (Compare "Contract".)
- 24 (4) "Bank" means any person engaged in the business of banking.
- 25 (5) "Bearer" means the person in possession of an instrument, 26 document of title, or certificated security payable to bearer or 27 indorsed in blank.
- (6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.
- 34 (7) "Branch" includes a separately incorporated foreign branch of
- 36 (8) "Burden of establishing" a fact means the burden of persuading

- 1 the triers of fact that the existence of the fact is more probable than
  2 its non-existence.
- 3 (9) "Buyer in ordinary course of business" means a person who in 4 good faith and without knowledge that the sale to him or her is in 5 violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of 6 7 selling goods of that kind but does not include a pawnbroker. All 8 persons who sell minerals or the like (including oil and gas) at 9 wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of 10 other property or on secured or unsecured credit and includes receiving 11 goods or documents of title under a pre-existing contract for sale but 12 13 does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt. 14
- (10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.
- (11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)
- 25 (12) "Creditor" includes a general creditor, a secured creditor, a 26 lien creditor and any representative of creditors, including an 27 assignee for the benefit of creditors, a trustee in bankruptcy, a 28 receiver in equity and an executor or administrator of an insolvent 29 debtor's or assignor's estate.
- 30 (13) "Defendant" includes a person in the position of defendant in 31 a cross-action or counterclaim.
- 32 (14) "Delivery" with respect to instruments, documents of title, 33 chattel paper, or certificated securities means voluntary transfer of 34 possession.
- 35 (15) "Document of title" includes bill of lading, dock warrant, 36 dock receipt, warehouse receipt or order for the delivery of goods, and 37 also any other document which in the regular course of business or 38 financing is treated as adequately evidencing that the person in 39 possession of it is entitled to receive, hold and dispose of the

- 1 document and the goods it covers. To be a document of title a document
- 2 must purport to be issued by or addressed to a bailee and purport to
- 3 cover goods in the bailee's possession which are either identified or
- 4 are fungible portions of an identified mass.
- 5 (16) "Fault" means wrongful act, omission or breach.
- 6 (17) "Fungible" with respect to goods or securities means goods or
- 7 securities of which any unit is, by nature or usage of trade, the
- 8 equivalent of any other like unit. Goods which are not fungible shall
- 9 be deemed fungible for the purposes of this Title to the extent that
- 10 under a particular agreement or document unlike units are treated as
- 11 equivalents.
- 12 (18) "Genuine" means free of forgery or counterfeiting.
- 13 (19) "Good faith" means honesty in fact in the conduct or
- 14 transaction concerned.
- 15 (20) "Holder" with respect to a negotiable instrument, means the
- 16 person in possession if the instrument is payable to bearer or, in the
- 17 case of an instrument payable to an identified person, if the
- 18 identified person is in possession. "Holder" with respect to a
- 19 document of title means the person in possession if the goods are
- 20 deliverable to bearer or to the order of the person in possession.
- 21 (21) To "honor" is to pay or to accept and pay, or where a credit
- 22 so engages to purchase or discount a draft complying with the terms of
- 23 the credit.

- 24 (22) "Insolvency proceedings" includes any assignment for the
- 25 benefit of creditors or other proceedings intended to liquidate or
- 26 rehabilitate the estate of the person involved.
- 27 (23) A person is "insolvent" who either has ceased to pay his or
- 28 her debts in the ordinary course of business or cannot pay his or her
- 29 debts as they become due or is insolvent within the meaning of the
- 30 federal bankruptcy law.
- 31 (24) "Money" means a medium of exchange authorized or adopted by a
- 32 domestic or foreign government and includes a monetary unit of account
- 33 established by an intergovernmental organization or by agreement
- 34 between two or more nations.
  - (25) A person has "notice" of a fact when
- 36 (a) he or she has actual knowledge of it; or
- 37 (b) he or she has received a notice or notification of it; or
- 38 (c) from all the facts and circumstances known to him or her at the
- 39 time in question he or she has reason to know that it exists.

- 1 A person "knows" or has "knowledge" of a fact when he or she has actual
- 2 knowledge of it. "Discover" or "learn" or a word or phrase of similar
- 3 import refers to knowledge rather than to reason to know. The time and
- 4 circumstances under which a notice or notification may cease to be
- 5 effective are not determined by this Title.
- 6 (26) A person "notifies" or "gives" a notice or notification to
- 7 another by taking such steps as may be reasonably required to inform
- 8 the other in ordinary course whether or not such other actually comes
- 9 to know of it. A person "receives" a notice or notification when
- 10 (a) it comes to his or her attention; or
- 11 (b) it is duly delivered at the place of business through which the
- 12 contract was made or at any other place held out by him or her as the
- 13 place for receipt of such communications.
- 14 (27) Notice, knowledge or a notice or notification received by an
- 15 organization is effective for a particular transaction from the time
- 16 when it is brought to the attention of the individual conducting that
- 17 transaction, and in any event from the time when it would have been
- 18 brought to his or her attention if the organization had exercised due
- 19 diligence. An organization exercises due diligence if it maintains
- 20 reasonable routines for communicating significant information to the
- 21 person conducting the transaction and there is reasonable compliance
- 22 with the routines. Due diligence does not require an individual acting
- 23 for the organization to communicate information unless such
- 24 communication is part of his or her regular duties or unless he or she
- 25 has reason to know of the transaction and that the transaction would be
- 26 materially affected by the information.
- 27 (28) "Organization" includes a corporation, government or
- 28 governmental subdivision or agency, business trust, estate, trust,
- 29 partnership or association, two or more persons having a joint or
- 30 common interest, or any other legal or commercial entity.
- 31 (29) "Party", as distinct from "third party", means a person who
- 32 has engaged in a transaction or made an agreement within this Title.
- 33 (30) "Person" includes an individual or an organization (See RCW
- 34 62A.1-102).
- 35 (31) "Presumption" or "presumed" means that the trier of fact must
- 36 find the existence of the fact presumed unless and until evidence is
- 37 introduced which would support a finding of its nonexistence.
- 38 (32) "Purchase" includes taking by sale, discount, negotiation,
- 39 mortgage, pledge, lien, issue or re-issue, gift or any other voluntary

- 1 transaction creating an interest in property.
- 2 (33) "Purchaser" means a person who takes by purchase.
- 3 (34) "Remedy" means any remedial right to which an aggrieved party 4 is entitled with or without resort to a tribunal.
- 5 (35) "Representative" includes an agent, an officer of a 6 corporation or association, and a trustee, executor or administrator of 7 an estate, or any other person empowered to act for another.
  - (36) "Rights" includes remedies.

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- 9 (37) "Security interest" means an interest in personal property or 10 fixtures which secures payment or performance of an obligation, except 11 for lease-purchase agreements under chapter 63.19 RCW. The retention or reservation of title by a seller of goods notwithstanding shipment 12 13 or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any 14 15 interest of a buyer of accounts or chattel paper which is subject to 16 The special property interest of a buyer of goods on 17 identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security 18 19 interest" by complying with Article 9. Unless a consignment is intended as security, reservation of title thereunder is not a 20 "security interest" but a consignment in any event is subject to the 21 provisions on consignment sales (RCW 62A.2-326). 22
  - Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:
- 29 (a) The original term of the lease is equal to or greater than the 30 remaining economic life of the goods;
- 31 (b) The lessee is bound to renew the lease for the remaining 32 economic life of the goods or is bound to become the owner of the 33 goods;
- 34 (c) The lessee has an option to renew the lease for the remaining 35 economic life of the goods for no additional consideration or nominal 36 additional consideration upon compliance with the lease agreement; or
- 37 (d) The lessee has an option to become the owner of the goods for 38 no additional consideration or nominal additional consideration upon 39 compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- 3 (a) The present value of the consideration the lessee is obligated 4 to pay the lessor for the right to possession and use of the goods is 5 substantially equal to or is greater than the fair market value of the 6 goods at the time the lease is entered into;
- 7 (b) The lessee assumes risk of loss of the goods, or agrees to pay 8 taxes, insurance, filing, recording, or registration fees, or service 9 or maintenance costs with respect to the goods;
- 10 (c) The lessee has an option to renew the lease or to become the 11 owner of the goods;
- (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed;
- (e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed; or
- (f) The amount of rental payments may or will be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the goods.

For purposes of this subsection (37):

- 24 (a) Additional consideration is not nominal if (i) when the option 25 to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the 26 27 renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the 28 lessee the price is stated to be the fair market value of the goods 29 30 determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably 31 predictable cost of performing under the lease agreement if the option 32 33 is not exercised;
- 34 (b) "Reasonably predictable" and "remaining economic life of the 35 goods" are to be determined with reference to the facts and 36 circumstances at the time the transaction is entered into; and
- 37 (c) "Present value" means the amount as of a date certain of one or 38 more sums payable in the future, discounted to the date certain. The 39 discount is determined by the interest rate specified by the parties if

- the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- (38) "Send" in connection with any writing or notice means to 5 deposit in the mail or deliver for transmission by any other usual 6 7 means of communication with postage or cost of transmission provided 8 for and properly addressed and in the case of an instrument to an 9 address specified thereon or otherwise agreed, or if there be none to 10 any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if 11 properly sent has the effect of a proper sending. 12
- 13 (39) "Signed" includes any symbol executed or adopted by a party 14 with present intention to authenticate a writing.
- 15 (40) "Surety" includes guarantor.
- 16 (41) "Telegram" includes a message transmitted by radio, teletype, 17 cable, any mechanical method of transmission, or the like.
- 18 (42) "Term" means that portion of an agreement which relates to a 19 particular matter.
- 20 (43) "Unauthorized" signature means one made without actual, 21 implied or apparent authority and includes a forgery.
- 22 (44) "Value". Except as otherwise provided with respect to 23 negotiable instruments and bank collections (RCW 62A.3-303, RCW ((62A.4-208))) 62A.4-210, and RCW ((62A.4-209))) 62A.4-211) a person 25 gives "value" for rights if he or she acquires them
- 26 (a) in return for a binding commitment to extend credit or for the 27 extension of immediately available credit whether or not drawn upon and 28 whether or not a charge-back is provided for in the event of 29 difficulties in collection; or
- 30 (b) as security for or in total or partial satisfaction of a 31 preexisting claim; or
- 32 (c) by accepting delivery pursuant to a pre-existing contract for 33 purchase; or
- 34 (d) generally, in return for any consideration sufficient to 35 support a simple contract.
- 36 (45) "Warehouse receipt" means a receipt issued by a person engaged 37 in the business of storing goods for hire.
- 38 (46) "Written" or "writing" includes printing, typewriting or any 39 other intentional reduction to tangible form.

- 1 **Sec. 2.** RCW 62A.2-511 and 1965 ex.s. c 157 s 2-511 are each 2 amended to read as follows:
- 3 (1) Unless otherwise agreed tender of payment is a condition to the 4 seller's duty to tender and complete any delivery.
- 5 (2) Tender of payment is sufficient when made by any means or in 6 any manner current in the ordinary course of business unless the seller 7 demands payment in legal tender and gives any extension of time 8 reasonably necessary to procure it.
- 9 (3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW ((62A.3-802))) 62A.3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.
- 13 **Sec. 3.** RCW 62A.3-112 and 1993 c 229 s 14 are each amended to read 14 as follows:
- 15 (a) Unless otherwise provided in the instrument, (i) ((an instrument is not payable with)) interest is payable pursuant to RCW 17 19.52.010, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.
- 19 (b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or 20 21 rates. The amount or rate of interest may be stated or described in 22 the instrument in any manner and may require reference to information 23 not contained in the instrument. ((If an instrument provides for interest, but the amount of interest payable cannot be ascertained from 24 25 the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first 26 27 accrues.))
- 28 **Sec. 4.** RCW 62A.9-203 and 1986 c 35 s 47 are each amended to read 29 as follows:
- (1) Subject to the provisions of RCW ((62A.4-208)) 62A.4-210 on the security interest of a collecting bank, RCW 62A.8-321 on security interests in securities and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:
- 36 (a) the collateral is in the possession of the secured party 37 pursuant to agreement, or the debtor has signed a security agreement

- 1 which contains a description of the collateral and in addition, when
- 2 the security interest covers crops growing or to be grown or timber to
- 3 be cut, a description of the land concerned;
  - (b) value has been given; and
- 5 (c) the debtor has rights in the collateral.
- 6 (2) A security interest attaches when it becomes enforceable 7 against the debtor with respect to the collateral. Attachment occurs
- 8 as soon as all of the events specified in subsection (1) have taken
- 9 place unless explicit agreement postpones the time of attaching.
- 10 (3) Unless otherwise agreed a security agreement gives the secured 11 party the rights to proceeds provided by RCW 62A.9-306.
- 12 (4) A transaction, although subject to this Article, is also
- 13 subject to chapters 31.04, ((31.08,)) 31.12, 31.16, 31.20, and 31.24
- 14 RCW, and in the case of conflict between the provisions of this Article
- 15 and any such statute, the provisions of such statute control. Failure
- 16 to comply with any applicable statute has only the effect which is
- 17 specified therein.

- 18 **Sec. 5.** RCW 62A.9-206 and 1965 ex.s. c 157 s 9-206 are each
- 19 amended to read as follows:
- 20 (1) Subject to any statute or decision which establishes a
- 21 different rule for buyers or lessees of consumer goods, an agreement by
- 22 a buyer or lessee that he will not assert against an assignee any claim
- 23 or defense which he may have against the seller or lessor is
- 24 enforceable by an assignee who takes his assignment for value, in good
- 25 faith and without notice of a claim or defense, except as to defenses
- 26 of a type which may be asserted against a holder in due course of a
- 27 negotiable instrument under the Article on ((Commercial Paper))
- 28 <u>Negotiable Instruments</u> (Article 3).
- 29 (2) When a seller retains a purchase money security interest in
- 30 goods the Article on Sales (Article 2) governs the sale and any
- 31 disclaimer, limitation or modification of the seller's warranties.
- 32 Sec. 6. RCW 62A.9-302 and 1987 c 189 s 1 and 1986 c 35 s 48 are
- 33 each reenacted and amended to read as follows:
- 34 (1) A financing statement must be filed to perfect all security
- 35 interests except the following:
- 36 (a) a security interest in collateral in possession of the secured
- 37 party under RCW 62A.9-305;

- 1 (b) a security interest temporarily perfected in instruments or 2 documents without delivery under RCW 62A.9-304 or in proceeds for a ten 3 day period under RCW 62A.9-306;
- 4 (c) a security interest created by an assignment of a beneficial 5 interest in a trust or a decedent's estate;

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- (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;
- (e) a security interest of a collecting bank (RCW 62A.4-208) or in securities (RCW 62A.8-321) or arising under the Articles on Sales and Leases (RCW 62A.9-113) or covered in subsection (3) of this section;
- 14 (f) an assignment for the benefit of all the creditors of the 15 transferor, and subsequent transfers by the assignee thereunder.
- 16 (2) If a secured party assigns a perfected security interest, no 17 filing under this Article is required in order to continue the 18 perfected status of the security interest against creditors of and 19 transferees from the original debtor.
- 20 (3) The filing of a financing statement otherwise required by this 21 Article is not necessary or effective to perfect a security interest in 22 property subject to
- (a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or
- (b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
- 33 (c) a certificate of title statute of another jurisdiction under 34 the law of which indication of a security interest on the certificate 35 is required as a condition of perfection (subsection (2) of RCW 62A.9-36 103).
- 37 (4) Compliance with a statute or treaty described in subsection (3) 38 is equivalent to the filing of a financing statement under this 39 Article, and a security interest in property subject to the statute or

- treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.
- 7 (5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made 8 9 by any corporation primarily engaged in the railroad or street railway 10 business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the 11 12 production, transmission or distribution of electricity, steam, gas or 13 water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of 14 15 licensing. When so filed, such instrument shall remain effective until 16 terminated, without the need for filing a continuation statement. 17 Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing 18 19 officer for the foregoing purposes.
- 20 **Sec. 7.** RCW 62A.9-312 and 1989 c 251 s 1 are each amended to read 21 as follows:
- (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW ((62A.4-24 208)) 62A.4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments.
- 28 (2) Conflicting priorities between security interests in crops 29 shall be governed by chapter 60.11 RCW.
- 30 (3) A perfected purchase money security interest in inventory has 31 priority over a conflicting security interest in the same inventory and 32 also has priority in identifiable cash proceeds received on or before 33 the delivery of the inventory to a buyer if
- 34 (a) the purchase money security interest is perfected at the time 35 the debtor receives possession of the inventory; and
- 36 (b) the purchase money secured party gives notification in writing 37 to the holder of the conflicting security interest if the holder had 38 filed a financing statement covering the same types of inventory (i)

- l before the date of the filing made by the purchase money secured party,
- 2 or (ii) before the beginning of the twenty-one day period where the
- 3 purchase money security interest is temporarily perfected without
- 4 filing or possession (subsection (5) of RCW 62A.9-304); and
- 5 (c) the holder of the conflicting security interest receives the
- 6 notification within five years before the debtor receives possession of
- 7 the inventory; and
- 8 (d) the notification states that the person giving the notice has
- 9 or expects to acquire a purchase money security interest in inventory
- 10 of the debtor, describing such inventory by item or type.
- 11 (4) A purchase money security interest in collateral other than
- 12 inventory has priority over a conflicting security interest in the same
- 13 collateral or its proceeds if the purchase money security interest is
- 14 perfected at the time the debtor receives possession of the collateral
- 15 or within twenty days thereafter.
- 16 (5) In all cases not governed by other rules stated in this section
- 17 (including cases of purchase money security interests which do not
- 18 qualify for the special priorities set forth in subsections (3) and (4)
- 19 of this section), priority between conflicting security interests in
- 20 the same collateral shall be determined according to the following
- 21 rules:
- 22 (a) Conflicting security interests rank according to priority in
- 23 time of filing or perfection. Priority dates from the time a filing is
- 24 first made covering the collateral or the time the security interest is
- 25 first perfected, whichever is earlier, provided that there is no period
- 26 thereafter when there is neither filing nor perfection.
- 27 (b) So long as conflicting security interests are unperfected, the
- 28 first to attach has priority.
- 29 (6) For the purposes of subsection (5) a date of filing or
- 30 perfection as to collateral is also a date of filing or perfection as
- 31 to proceeds.
- 32 (7) If future advances are made while a security interest is
- 33 perfected by filing, the taking of possession, or under RCW 62A.8-321
- 34 on securities, the security interest has the same priority for the
- 35 purposes of subsection (5) with respect to the future advances as it
- 36 does with respect to the first advance. If a commitment is made before
- 37 or while the security interest is so perfected, the security interest
- 38 has the same priority with respect to advances made pursuant thereto.
- 39 In other cases a perfected security interest has priority from the date

1 the advance is made."

SHB 1182 - S COMM AMD
By Committee on Law & Justice

On page 1, line 1 of the title, after "code;" strike the remainder of the title and insert "amending RCW 62A.2-511, 62A.3-112, 62A.9-203, 62A.9-206, and 62A.9-312; and reenacting and amending RCW 62A.1-201 and 62A.9-302."

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