

SENATE BILL NO. 82—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to technological crime and the seizure of certain funds associated with prepaid or stored value cards. (BDR 14-266)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to crimes; revising the provisions relating to the disclosure of certain electronic information by certain providers of certain technological services during investigations involving technological crimes; revising the provisions relating to the forfeiture of property and proceeds attributable to technological crimes; establishing procedures for the freezing and seizing of certain funds associated with prepaid or stored value cards; making various other changes relating to technological crimes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2 and 14 of this bill repeal the existing provisions of Nevada law pertaining to the disclosure of certain information by a provider of Internet service and replace those existing provisions with new provisions authorizing the disclosure of certain information under certain circumstances by a provider of electronic communication service or a remote computing service which conform with, and which are closely patterned after, the requirements of applicable federal law. (NRS 193.340, 18 U.S.C. § 2703)

Sections 3-10 of this bill establish procedures to allow law enforcement to freeze and seize funds associated with prepaid or stored value cards.

Section 6 of this bill allows a peace officer to freeze for 10 business days the funds associated with a prepaid or stored value card in certain circumstances and requires the peace officer to provide notice of the freeze to the financial institution identified as the issuer of the card.



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Section 7 of this bill allows a peace officer to seize the funds associated with a prepaid or stored value card if the financial institution identified as the issuer of the card is not located in this country and the peace officer has probable cause to believe a freeze will not be honored by the financial institution.

Section 8 of this bill provides procedures for the issuance of warrants to seize funds associated with prepaid or stored value cards.

Section 9 of this bill provides a procedure for a person aggrieved by the seizure of the funds associated with a prepaid or stored value card pursuant to a warrant to file a motion for the return of the funds and the suppression of the evidence obtained pursuant to the warrant.

Section 10 of this bill allows the Attorney General or a state or local law enforcement agency to enter into a contract to carry out the provisions of this bill concerning the freezing and seizing of funds.

Section 11 of this bill revises the provisions relating to the forfeiture of property and proceeds attributable to any felony crime to include, specifically, reference to a "prepaid or stored value card" and funds associated with a prepaid or stored value card as property that is subject to forfeiture. (NRS 179.1162)

Section 12 of this bill revises the provisions relating to the forfeiture of property and proceeds attributable to technological crimes to include, specifically, reference to a "prepaid or stored value card" and funds associated with a prepaid or stored value card as property that is subject to forfeiture. (NRS 179.1215)

Section 13 of this bill makes a technical correction to include a necessary reference to the provisions relating to forfeiture of property and proceeds attributable to technological crimes. (NRS 179.1211-179.1235)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 1 to 10, inclusive, of this act.

Sec. 2. 1. *In investigating criminal activity that involves or may involve a technological crime, a governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system:*

(a) For 180 days or less, only by a search warrant issued pursuant to NRS 179.015 to 179.115, inclusive.

(b) For more than 180 days, by any means available pursuant to subsection 2.

2. *A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this subsection applies:*

(a) Without prior notice to the subscriber or customer from the governmental entity by obtaining a search warrant pursuant to NRS 179.015 to 179.115, inclusive; or

(b) With prior notice to the subscriber or customer from the governmental entity:



- 1 (1) *By serving a subpoena; or*
2 (2) *By obtaining a court order for such disclosure pursuant*
3 *to subsection 7, except that delayed notice may be given pursuant*
4 *to subsection 11.*

5 3. *Subsection 2 applies with respect to any wire or electronic*
6 *communication that is held or maintained on that remote*
7 *computing service;*

8 (a) *On behalf of, and received by means of electronic*
9 *transmission from, or created by means of computer processing of*
10 *communications received by means of electronic transmission*
11 *from, a subscriber or customer of such remote computing service;*
12 *and*

13 (b) *Solely for the purpose of providing storage or computer*
14 *processing services to such subscriber or customer, if such remote*
15 *computing service is not authorized to access the contents of any*
16 *such communications for purposes of providing any services other*
17 *than storage or computer processing.*

18 4. *A governmental entity may require a provider of electronic*
19 *communication service or remote computing service to disclose a*
20 *record or other information pertaining to a subscriber to or*
21 *customer of such service, not including the contents of*
22 *communications, only when the governmental entity:*

23 (a) *Obtains a search warrant pursuant to NRS 179.015 to*
24 *179.115, inclusive;*

25 (b) *Obtains a court order for such disclosure pursuant to*
26 *subsection 7;*

27 (c) *Has the consent of the subscriber or customer to such*
28 *disclosure; or*

29 (d) *Seeks information pursuant to subsection 5.*

30 5. *A provider of electronic communication service or remote*
31 *computing service shall disclose to a governmental entity the:*

32 (a) *Name;*

33 (b) *Address;*

34 (c) *Local and long distance telephone connection records, or*
35 *records of session times and durations;*

36 (d) *Length of service, including start date, and types of service*
37 *utilized;*

38 (e) *Telephone or instrument number or other subscriber*
39 *number or identity, including any temporarily assigned network*
40 *address; and*

41 (f) *Means and source of payment for such service, including*
42 *any credit card or bank account number,*

43 ↳ *of a subscriber to or customer of such service when the*
44 *governmental entity obtains a subpoena or uses any means*
45 *available pursuant to subsection 4.*



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1 6. A governmental entity receiving records or information
2 pursuant to subsection 4 or 5 is not required to provide notice to a
3 subscriber or customer.

4 7. A court order for disclosure pursuant to subsection 2, 4 or
5 5 may be issued by any court of competent jurisdiction only if the
6 governmental entity offers specific and articulable facts showing
7 that there are reasonable grounds to believe that the contents of a
8 wire or electronic communication, or the records or other
9 information sought, are relevant and material to an ongoing
10 criminal investigation that involves or may involve a technological
11 crime. A court issuing an order pursuant to this subsection, on a
12 motion made promptly by the provider of wire or electronic
13 communication service or remote computing service, may quash
14 or modify such order if the information or records requested are
15 unusually voluminous in nature or compliance with such order
16 otherwise would cause an undue burden on the provider of wire or
17 electronic communication service or remote computing service.

18 8. If a person who has been issued a subpoena pursuant to
19 this section:

20 (a) Charges a fee for providing the information, the fee must
21 not exceed the actual costs for providing the information.

22 (b) Refuses to produce any information that the subpoena
23 requires, the person who issued the subpoena may apply to the
24 district court for the judicial district in which the investigation is
25 being carried out for the enforcement of the subpoena in the
26 manner provided by law for the enforcement of a subpoena in a
27 civil action.

28 9. A provider of wire or electronic communication service or
29 remote computing service, upon the request of a governmental
30 entity, shall take all necessary steps to preserve records and other
31 evidence in its possession pending the issuance of a court order or
32 other process. Such records and other evidence must be retained
33 for a period of 90 days, which may be extended for an additional
34 90-day period upon request by the governmental entity.

35 10. Notwithstanding the provisions of NRS 179.015 to
36 179.115, inclusive, the presence of a peace officer is not required
37 for service or execution of a search warrant requiring disclosure
38 by a provider of electronic communication service or remote
39 computing service of the contents of communications or records
40 or other information pertaining to a subscriber to or customer of
41 such service.

42 11. The notice to a subscriber or customer required by this
43 section may be delayed for a period not to exceed 90 days under
44 any of the following circumstances:



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1 (a) If the applicant for a search warrant or court order
2 requests a delay of notification and the court finds that delay is
3 necessary to protect the safety of any person or to prevent flight
4 from prosecution, tampering with evidence, intimidation of
5 witnesses or jeopardizing an investigation.

6 (b) If the investigator or prosecuting attorney proceeding by
7 subpoena executes a written certification that there is reason to
8 believe that notice to the subscriber or party may result in danger
9 to the safety of any person, flight from prosecution, tampering
10 with evidence, intimidation of witnesses or jeopardizing an
11 investigation. A true copy of the certification must be retained with
12 the subpoena.

13 ↪ If further delay of notification is necessary, an extension not to
14 exceed 90 days may be obtained by application to the court.

15 12. No cause of action may lie in any court against any
16 provider of wire or electronic communication service or remote
17 computing service, its officers, employees, agents or other
18 specified persons for providing information, facilities or assistance
19 in accordance with the terms of a court order, search warrant,
20 subpoena or other process pursuant to this section.

21 13. As used in this section:

22 (a) The terms "contents," "electronic communication,"
23 "electronic communication service," "electronic communications
24 system," "electronic storage," "oral communication" and "wire
25 communication" have the meanings ascribed to them in 18 U.S.C.
26 § 2510.

27 (b) "Governmental entity" includes the following law
28 enforcement officials, and any authorized representative thereof:

29 (1) The Attorney General;

30 (2) A district attorney;

31 (3) A sheriff in this State;

32 (4) Any organized police department of any municipality in
33 this State;

34 (5) Any school police unit of any school district in this
35 State; and

36 (6) Any department of this State engaged in the
37 enforcement of any criminal law of this State.

38 (c) "Remote computing service" has the meaning ascribed to it
39 in 18 U.S.C. § 2711.

40 **Sec. 3.** As used in sections 3 to 10, inclusive of this act,
41 unless the context otherwise requires, the words and terms defined
42 in sections 4 and 5 of this act have the meanings ascribed to them
43 in those sections.

44 **Sec. 4.** "Prepaid or stored value card" means any instrument
45 or device used to access funds or monetary value represented in



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1 *digital electronic format, whether or not specially encrypted, and*
2 *stored or capable of storage on electronic media in such a way as*
3 *to be retrievable and transferable electronically.*

4 **Sec. 5.** *“Proceeds” has the meaning ascribed to it in*
5 *NRS 179.1161.*

6 **Sec. 6. 1.** *If a peace officer:*

7 *(a) Has detained a person pursuant to NRS 171.123, has*
8 *arrested a person pursuant to any statutory provision authorizing*
9 *or requiring the arrest of a person or is investigating a crime for*
10 *which a suspect:*

11 *(1) Has not been identified; or*

12 *(2) Has been identified but was not reasonably believed by*
13 *the peace officer to possess or control a prepaid or stored value*
14 *card before the peace officer lawfully obtained possession of a*
15 *prepaid or stored value card;*

16 *(b) Has lawfully obtained possession of a prepaid or stored*
17 *value card; and*

18 *(c) Has probable cause to believe that the prepaid or stored*
19 *value card represents the proceeds of a crime or has been used, is*
20 *being used or is intended for use in the commission of a crime,*

21 *↳ the peace officer may use an electronic device, a necessary*
22 *electronic communications network or any other reasonable*
23 *means to determine the name, personal information and the*
24 *amount of funds associated with the prepaid or stored value card*
25 *and freeze the funds associated with the prepaid or stored value*
26 *card, or any portion thereof, for a period of not more than 10*
27 *business days.*

28 **2.** *Upon freezing any funds pursuant to this section, the peace*
29 *officer shall give notice, or cause notice to be given, to any*
30 *financial institution identified as the issuer of the prepaid or*
31 *stored value card. Except as otherwise provided in this subsection,*
32 *such notice must be in electronic form and must include, without*
33 *limitation, the amount of funds frozen, the duration of the freeze*
34 *and sufficient contact information to allow the holder of the funds*
35 *to request the lifting of the freeze. If notice in electronic form*
36 *cannot be reasonably effectuated, the peace officer shall make a*
37 *reasonable effort under the circumstances to give the notice*
38 *required by this subsection or cause such notice to be given.*

39 **Sec. 7. 1.** *If a peace officer has probable cause to believe*
40 *the financial institution identified as the issuer of the prepaid or*
41 *stored value card is located outside the United States and will not*
42 *honor a freeze imposed pursuant to section 6 of this act, the peace*
43 *officer may use an electronic device, a necessary communications*
44 *network or any other reasonable means to seize the funds*



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1 *associated with the prepaid or stored value card, or any portion*
2 *thereof.*

3 2. *Upon seizing any funds pursuant to this section, the peace*
4 *officer shall give notice, or cause notice to be given, to the*
5 *financial institution identified as the issuer of the prepaid or*
6 *stored value card. Except as otherwise provided in this subsection,*
7 *such notice must be in electronic form and must include, without*
8 *limitation, the amount of funds seized, sufficient information to*
9 *allow the financial institution to contact the peace officer or his*
10 *law enforcement agency and a statement that the seizure is subject*
11 *to the provisions of NRS 179.1156 to 179.121, inclusive, or*
12 *179.1211 to 179.1235, inclusive. If notice in electronic form*
13 *cannot be reasonably effectuated, the peace officer shall make a*
14 *reasonable effort under the circumstances to give the notice*
15 *required by this subsection or cause such notice to be given.*

16 3. *A person aggrieved by the seizure of any funds pursuant to*
17 *this section may move the court having jurisdiction where the*
18 *peace officer who seized the funds is headquartered for the return*
19 *of the seized funds and to suppress the use as evidence of the*
20 *seized funds and any identifying information obtained in*
21 *connection with the seizure on the ground that there was not*
22 *probable cause for believing that the funds represent the proceeds*
23 *of a crime or had been used, are being used or were intended for*
24 *use in the commission of a crime.*

25 4. *If the court hearing a motion filed pursuant to subsection 3*
26 *finds that there was not probable cause for believing that the*
27 *funds represent the proceeds of a crime or had been used, are*
28 *being used or were intended for use in the commission of a crime,*
29 *the court shall restore the funds, unless the funds are otherwise*
30 *subject to lawful detention, and the funds and any identifying*
31 *information obtained in connection with the seizure are not*
32 *admissible evidence at any trial or hearing.*

33 **Sec. 8.** 1. *A magistrate of the State of Nevada may issue a*
34 *warrant to seize the funds associated with a prepaid or stored*
35 *value card, or any portion thereof, if the magistrate finds that*
36 *there is probable cause to believe that the funds to be seized:*

37 (a) *Were stolen or embezzled in violation of the laws of the*
38 *State of Nevada, or of any other state or the United States;*

39 (b) *Were designed or intended for use, or are being or had*
40 *been used, as the means of committing a criminal offense; or*

41 (c) *Constitute evidence which tends to show that a criminal*
42 *offense has been committed or that a particular person committed*
43 *a criminal offense.*

44 2. *Except as otherwise provided in subsection 3, the warrant*
45 *described in this section may issue only on affidavit or affidavits*



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1 *sworn to before the magistrate and establishing the grounds for*
2 *issuing the warrant.*

3 3. *In lieu of the affidavit required by subsection 2, the*
4 *magistrate may take an oral statement given under oath, which*
5 *must be recorded in the presence of the magistrate or in his*
6 *immediate vicinity by a certified court reporter or by electronic*
7 *means, transcribed, certified by the reporter if he recorded it and*
8 *certified by the magistrate. The statement must be filed with the*
9 *clerk of the court.*

10 4. *Upon a showing of good cause, the magistrate may order*
11 *an affidavit or a recording of an oral statement given pursuant to*
12 *this section to be sealed. Upon a showing of good cause, a court*
13 *may cause the affidavit or recording to be unsealed.*

14 5. *A warrant issued pursuant to this section must be directed*
15 *to a peace officer who is able to execute the warrant through the*
16 *electronic seizure of the funds. The warrant must command the*
17 *peace officer to seize the funds associated with the prepaid or*
18 *stored value card, or any portion thereof, and:*

19 (a) *State the grounds or probable cause for its issuance and*
20 *the names of the persons whose affidavits have been taken in*
21 *support thereof; or*

22 (b) *Incorporate by reference the affidavit or oral statement*
23 *upon which it is based.*

24 6. *A warrant issued pursuant to this section must designate*
25 *the magistrate to whom it is to be returned.*

26 7. *A warrant issued pursuant to this section may be executed*
27 *and returned only within 10 days of its date.*

28 8. *The peace officer executing a warrant issued pursuant to*
29 *this section shall give notice, or cause notice to be given, to any*
30 *financial institution identified as the issuer of the prepaid or*
31 *stored value card. Except as otherwise provided in this subsection,*
32 *such notice must be in electronic form and must include, without*
33 *limitation, the alleged crime associated with the seizure, the*
34 *amount of funds seized, the manner in which the financial*
35 *institution may obtain a copy of the warrant and the phone*
36 *number and address of the clerk of the court having jurisdiction*
37 *where the warrant was issued. If notice in electronic form cannot*
38 *be reasonably effectuated, the peace officer shall make a*
39 *reasonable effort under the circumstances to give the notice*
40 *required by this subsection or cause such notice to be given.*

41 9. *The return must be made promptly and be accompanied by*
42 *any physical evidence of the seizure.*

43 10. *The magistrate who has issued a warrant pursuant to this*
44 *section shall attach to the warrant a copy of the return, any*
45 *physical evidence of the seizure and any other papers in*



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1 *connection therewith and shall file them with the clerk of the*
2 *court having jurisdiction where the warrant was issued.*

3 *11. Any funds seized to this section must be maintained in an*
4 *escrow account, or other similar account, in a national bank that*
5 *is chartered and regulated by the Office of the Comptroller of the*
6 *Currency of the United States Department of the Treasury. The*
7 *funds must be maintained pursuant to procedures that ensure*
8 *appropriate accounting and auditing.*

9 **Sec. 9.** *1. A person aggrieved by the seizure of funds*
10 *pursuant to section 8 of this act may move the court having*
11 *jurisdiction where the warrant was issued for the return of the*
12 *seized funds and to suppress the use as evidence of the seized*
13 *funds and any identifying information obtained in connection with*
14 *the seizure on the grounds that:*

15 *(a) The funds were illegally seized without a warrant;*

16 *(b) The warrant is insufficient on its face;*

17 *(c) There was not probable cause for believing the existence of*
18 *the grounds on which the warrant was issued; or*

19 *(d) The warrant was illegally executed.*

20 *↪ The judge shall receive evidence on any issue of fact necessary*
21 *to the decision of the motion.*

22 *2. If a motion filed pursuant to this section is granted, the*
23 *funds must be restored, unless otherwise subject to lawful*
24 *detention, and the funds and any identifying information obtained*
25 *in connection with the seizure is not admissible evidence at any*
26 *hearing or trial.*

27 *3. Any motion to suppress evidence may also be made in the*
28 *court where the trial is to take place. The motion must be made*
29 *before trial or hearing, unless opportunity to file the motion did*
30 *not exist or the defendant was not aware of the grounds for the*
31 *motion, but the court in its discretion may entertain the motion at*
32 *the trial or hearing.*

33 **Sec. 10.** *1. The Attorney General, his designee or any state*
34 *or local law enforcement agency in this State may enter into a*
35 *contract with any person to assist in carrying out the provisions of*
36 *sections 3 to 10, inclusive, of this act.*

37 *2. Before entering into a contract pursuant to subsection 1,*
38 *the Attorney General, his designee or a state or local law*
39 *enforcement agency shall consider the following factors:*

40 *(a) The functional benefits to all law enforcement agencies in*
41 *this State of maintaining either a single database or a series of*
42 *interlinked databases relating to possible criminal use of prepaid*
43 *or stored value cards.*

44 *(b) The overall costs of establishing and maintaining such a*
45 *database or databases.*



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(c) Any other factors that the Attorney General, his designee or the state or local law enforcement agency believe to be relevant.

3. Any contract entered into pursuant to this section:

(a) May be a sole source contract, not subject to the rules and requirements of open competitive bidding, if the period of the contract does not exceed 5 years;

(b) Must ensure that the freeze or seizure of funds pursuant to sections 3 to 10, inclusive, of this act does not deprive the financial institution subject to the freeze or seizure of interchange income; and

(c) Must indemnify and hold harmless any person who enters into a contract pursuant to this section, and any officers, employees or agents of that person, for claims for actions taken:

(1) At the direction of a law enforcement agency in this State and within the scope of the contract and sections 3 to 10, inclusive, of this act; and

(2) Pursuant to any warrant issued pursuant to section 8 of this act.

Sec. 11. NRS 179.1162 is hereby amended to read as follows:

179.1162 "Property" includes any:

1. Real property or interest in real property.

2. Fixture or improvement to real property.

3. Personal property, whether tangible or intangible, or interest in personal property.

4. Conveyance, including any aircraft, vehicle or vessel.

5. Money, security or negotiable instrument.

6. Proceeds.

7. *Prepaid or stored value card and funds associated with a prepaid or stored value card. As used in this subsection, "prepaid or stored value card" has the meaning ascribed to it in section 4 of this act.*

Sec. 12. NRS 179.1215 is hereby amended to read as follows:

179.1215 "Property" includes, without limitation, any:

1. Real property or interest in real property.

2. Fixture or improvement to real property.

3. Personal property, whether tangible or intangible, or interest in personal property.

4. Conveyance, including, without limitation, any aircraft, vehicle or vessel.

5. Money, security or negotiable instrument.

6. Proceeds.

7. *Prepaid or stored value card and funds associated with a prepaid or stored value card. As used in this subsection, "prepaid or stored value card" has the meaning ascribed to it in section 4 of this act.*



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- 1 **Sec. 13.** NRS 200.760 is hereby amended to read as follows:
2 200.760 All assets derived from or relating to any violation of
3 NRS 200.366, 200.710 to 200.730, inclusive, or 201.230 are subject
4 to forfeiture. A proceeding for their forfeiture may be brought
5 pursuant to NRS 179.1156 to 179.119, inclusive , *or 179.1211 to*
6 *179.1235, inclusive.*
7 **Sec. 14.** NRS 193.340 is hereby repealed.
8 **Sec. 15.** This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTION

193.340 Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena; fee for information.

1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703 is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 or more than \$500 for each violation.

2. In investigating criminal activity that involves or may involve the use of a computer, the Attorney General, a district attorney, the sheriff of any county in this State, the head of any organized police department of any municipality in this State, the head of any department of this State engaged in the enforcement of any criminal law of this State and any sheriff or chief of police of a municipality may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703 to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703.

3. If a person who has been issued a subpoena pursuant to subsection 2 charges a fee for providing the information, the fee must not exceed the actual cost for providing the information.

4. If a person who has been issued a subpoena pursuant to subsection 2 refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.



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5. As used in this section, “provider of Internet service” has the meaning ascribed to it in NRS 205.4758, but does not include a public library when it is engaged in providing access to the Internet.



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