

SECOND REGULAR SESSION

SENATE BILL NO. 1031

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5288S.011

AN ACT

To repeal sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, RSMo, and to enact in lieu thereof eighteen new sections relating to property insurance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, to read as follows:

375.001. 1. As used in this chapter, unless otherwise clearly indicated by the context, the following words mean:

(1) "Department", the department of insurance, financial institutions and professional registration;

(2) "Director", the director of the department of insurance, financial institutions and professional registration.

2. As used in sections 375.001 to 375.008 the following words and terms mean:

(1) "Claim", unless otherwise defined in a specific section, any specific request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy. A mere inquiry into whether a policy will cover a loss shall not constitute a claim;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 (2) "Insurer", all insurance companies, reciprocals, or interinsurance
15 exchanges transacting the business of insurance in this state;

16 [(2)] (3) "Nonpayment of premium", failure of the [named] insured to
17 discharge when due any of his obligations in connection with the payment of
18 premiums on the policy, or any installment of the premium, whether the premium
19 is payable directly to the insurer or its [agent] **producer** or indirectly under any
20 premium finance plan or extension of credit;

21 [(3)] (4) "Nonrenewal", the determination of an insurer not to issue or
22 deliver a policy replacing at the end of the policy period a policy previously issued
23 and delivered by the same insurer or a certificate or notice extending the term of
24 a policy beyond its policy period or term;

25 [(4)] (5) "Policy", a contract of insurance providing fire and extended
26 coverage insurance, whether separately or in combination with other coverages,
27 on owner-occupied habitational property not exceeding two families. "Policy" does
28 not include any insurance contracts issued under a property insurance inspection
29 and placement program [("FAIR" plan)] **"FAIR" plan** or an assigned risk plan,
30 or any insurance contracts insuring property not used predominantly for
31 habitational purposes[, or an insurance contract insuring a mobile home];

32 [(5)] (6) "Renewal" or "to renew", the issuance and delivery by an insurer
33 of a policy replacing at the end of the policy period a policy previously issued and
34 delivered by the same insurer, or the issuance and delivery of a certificate or
35 notice extending the term of the policy beyond its policy period or term. Any
36 policy with a policy period or term of less than six months shall for the purposes
37 of sections 375.001 to 375.008 be considered as if written for a policy period or
38 term of six months. Any policy written for a term longer than one year or any
39 policy with no fixed expiration date shall, for the purpose of sections 375.001 to
40 375.008, be considered as if written for successive policy periods or terms of one
41 year, and the policy may be terminated at the expiration of any annual period
42 upon giving [thirty] **sixty** days' notice of cancellation prior to the anniversary
43 date, and the cancellation shall not be subject to any other provisions of sections
44 375.001 to 375.008;

45 (7) **"Weather-related claim", loss resulting from an act of God**
46 **which an insured is unable to control and is unable to reasonably**
47 **reduce the risk that such peril will damage the insured property.**

375.002. 1. A notice of cancellation of a policy shall be effective only if it
2 is based on one or more of the following reasons:

3 (1) Nonpayment of premium; or

4 (2) Fraud or material misrepresentation affecting the policy or in the
5 presentation of a claim thereunder, or violation of any of the terms or conditions
6 of the policy; or

7 (3) The named insured or any occupant of the property has been convicted
8 of a crime arising out of acts increasing the hazard insured against; or

9 (4) Physical changes in the property insured which **significantly** increase
10 the hazards originally insured.

11 2. This section shall not apply to any policy or coverage which has been
12 in effect less than sixty days at the time notice of cancellation is mailed or
13 delivered by the insurer unless it is a renewal policy. **Any declination of an**
14 **application for a policy or coverage must comply with the notice**
15 **requirements of section 375.003.**

16 3. This section shall not apply to nonrenewal.

375.003. 1. No notice of cancellation of a policy to which section 375.002
2 applies shall be effective unless mailed or delivered by the insurer to the named
3 insured at least [~~thirty~~] **sixty** days prior to the effective date of
4 cancellation. However, where cancellation is for nonpayment of premium at least
5 ten days' notice of cancellation shall be given. The notice shall state the insurer's
6 actual reason for proposing the action, the statement of reason to be sufficiently
7 clear and specific so that a person of average intelligence can identify the basis
8 for the insurer's decision without further inquiry. Generalized terms such as
9 "personal habits", "living conditions", "**credit history**", "**poor credit history**",
10 "**poor credit rating**", "**poor insurance score**", or "poor morals" shall not
11 suffice to meet the requirements of this subsection. The notice shall also state
12 that the insured may be eligible for insurance through the Missouri [~~basic~~
13 property insurance inspection and placement program] **fair access to**
14 **insurance requirements (FAIR) plan.**

15 2. This section shall not apply to nonrenewal.

375.004. 1. No insurer shall refuse to renew a policy unless the insurer
2 or its agent mails or delivers to the named insured, at the address shown in the
3 policy, at least [~~thirty~~] **sixty** days' advance notice of its intention not to
4 renew. The notice shall state the insurer's actual reason for proposing the action,
5 the statement of reason to be sufficiently clear and specific so that a person of
6 average intelligence can identify the basis for the insurer's decision without
7 further inquiry. Generalized terms such as "personal habits", "living conditions",

8 **"credit history", "poor credit history", "poor credit rating", "poor**
9 **insurance score",** or "poor morals" shall not suffice to meet the requirements
10 of this subsection. The notice shall also state that the insured may be eligible for
11 insurance through the Missouri [basic property insurance inspection and
12 placement program] **fair access to insurance requirements (FAIR)**
13 **plan.** This section shall not apply:

- 14 (1) If the insurer has manifested its willingness to renew; or
15 (2) In case of nonpayment of premium; or
16 (3) If the named insured has indicated he does not wish to have the policy
17 renewed; or
18 (4) If the insured fails to pay any advance premium required by the
19 insurer for renewal.

20 2. Renewal of a policy shall not constitute a waiver or estoppel with
21 respect to grounds for cancellation which existed before the effective date of the
22 renewal.

23 3. **No insurer shall use weather-related claims as a basis for the**
24 **insurer's decision to refuse to renew a policy.**

25 4. **No insurer shall consider as a claim any inquiry by the**
26 **insured into whether a policy will cover a loss or an inquiry by an**
27 **insured as to type or level of coverage. No insurer shall use such**
28 **inquiries as a basis for nonrenewing the policy.**

29 5. **No insurer shall use a rating plan or rating system that**
30 **surcharges the individual insured's dwelling fire or homeowners**
31 **insurance premium based upon the insured's weather-related claims.**

32 6. **No insurer shall use a rating plan or rating system which**
33 **surcharges or modifies the premium of the individual insured's**
34 **dwelling fire or homeowners insurance premium based upon the**
35 **insured's inquiries as described in subsection 4 of this section.**

379.810. There is hereby established the "Missouri [Basic Property
2 Insurance Inspection and Placement Program" (hereinafter referred to as
3 "program")] **Fair Access to Insurance Requirements", hereinafter referred**
4 **to as "program plan" or "FAIR" plan program,** to make available [basic]
5 property insurance to persons having property interests in this state who are in
6 good faith entitled to but who are unable to procure such coverage through
7 ordinary methods. Such [program] **plan** shall provide for the equitable
8 distribution and placement of risks among all insurers in the manner and subject

9 to the conditions hereinafter stated.

379.815. As used in [this section] **sections 379.815 to 379.880**, the
2 following terms mean:

3 (1) "All-industry placement facility" (hereinafter referred to as "the
4 facility"), the organization formed by insurers to assist applicants in securing
5 [basic] property insurance, to issue policies and to administer the [program] **plan**
6 and the joint reinsurance association;

7 (2) ["Basic property insurance", the coverage against direct loss to real
8 and tangible personal property at a fixed location that is provided in the standard
9 fire policy and extended coverage endorsement, including builders' risk, and such
10 vandalism and malicious mischief endorsements, and such other classes of
11 insurance as may be added to the program with respect to the property by
12 amendment as hereinafter provided. Basic property insurance does not include
13 automobile risks or such types of manufacturing risks as the governing committee
14 may exclude with the approval of the director. Any contract, as defined in section
15 375.918, RSMo, of the facility shall be subject to the provisions of section 375.918,
16 RSMo;

17 (3) "Commercial", [basic] property insurance [not included under the
18 personal lines statistical plan] **for business or nonprofit interests that is**
19 **not for personal, family, or household purposes;**

20 [(4)] (3) "Director", the director of the department of insurance of the
21 state of Missouri;

22 [(5)] (4) "Habitational", [basic] property insurance included under the
23 personal lines statistical plan;

24 [(6)] (5) "Inspection bureau", the [rating bureau or other organization]
25 **entity** designated by the facility [with the approval of the director] to make
26 inspections as required under the [program] **plan** and to perform such other
27 duties as may be authorized by the facility, **subject to the approval of the**
28 **director;**

29 [(7)] (6) "Insurer", any insurance company, reciprocal or interinsurance
30 exchange or other organization licensed and authorized by the director to write
31 property insurance, including the property insurance components of multiperil
32 policies, on a direct basis, in this state;

33 [(8)] (7) "Person" includes any individual or group of individuals,
34 corporation, partnership, or association, or any other organized group of persons;

35 [(9)] (8) "Premiums written", gross direct premiums (excluding that

36 portion of premium on risks ceded to the joint reinsurance association) charged
37 during the second preceding calendar year with respect to property in this state
38 on all policies of [basic] property insurance and the [basic] property insurance
39 premium components of all multiperil policies, as computed by the facility, less
40 return premiums, dividends paid or credited to policyholders, or the unused or
41 unabsorbed portions of premium deposits;

42 **(9) "Property insurance", real and personal property, dwelling**
43 **fire program (habitational dwelling one- to four-family), commercial**
44 **fire (commercial and apartments five units and over), and homeowners**
45 **program. Earthquake coverage is available as an optional endorsement**
46 **under the dwelling fire program and the homeowners program, in**
47 **addition to other optional endorsements under each program. The**
48 **FAIR plan is to offer dwelling fire, commercial fire, and homeowners**
49 **coverage for property owners, renters, and condominium**
50 **owners. These products are to be similar to what is available in the**
51 **standard market and provide protection against loss from such hazards**
52 **as fire, lightning, wind, hail, explosion, smoke, vehicles, aircraft, and**
53 **vandalism and malicious mischief. The FAIR plan homeowners policy**
54 **shall protect against all of these perils as well as burglary and theft,**
55 **and the plan shall include personal liability coverage. Property**
56 **insurance does not include automobile risks or such types of**
57 **manufacturing risks as the governing committee may exclude with the**
58 **approval of the director;**

59 (10) "Property owner", with respect to any real, personal, or mixed real
60 and personal property, means any person having an insurable interest in such
61 property;

62 (11) "Secretary", the Secretary of the United States Department of
63 Housing and Urban Development.

379.820. 1. Any property owner or his representative, the insurer, or the
2 insurance [agent] **producer**, or other producer may request an inspection by the
3 inspection bureau. Such requests need not be in writing. The absence of a
4 **[building] property** owner or his representative during an inspection shall not
5 preclude a tenant seeking insurance from obtaining an inspection under the
6 program.

7 2. The manner and scope of the inspections of **[program] plan** business
8 shall be prescribed by the facility with the approval of the director.

9 3. An inspection report shall be made for each property inspected. The
10 report shall cover pertinent structural and occupancy features as well as the
11 general condition of the building and surrounding structures. A representative
12 photograph of the property may be taken during the inspection.

13 4. During the inspection, the inspector shall point out features of
14 structure and occupancy to the applicant or his representative and shall indicate
15 those features which may result in condition charges if the risk is accepted. The
16 inspector shall have no authority to advise whether the facility will provide the
17 coverage.

18 5. Within ~~[five]~~ **three** business days after the inspection, a copy of the
19 completed inspection report, and any photograph indicating the pertinent features
20 of the building, construction, maintenance, occupancy and surrounding property
21 shall be sent promptly to the facility. Included with the report shall be a rate
22 makeup statement, including any condition charges or surcharges proposed as a
23 result of the inspection and permitted by filings approved by the director. A copy
24 of the inspection report shall be made available to the applicant upon request.

379.825. 1. The facility, upon receipt of an application for coverage and
2 the corresponding inspection report from the inspection bureau, shall, after it
3 finds that the property is eligible for insurance under this **[program] plan**, issue
4 a policy.

5 2. The facility shall apportion the liability so assumed to the insurers in
6 the manner hereinafter provided in section 379.835.

7 3. Assessments upon each insurer in the **[program] plan** for expenses in
8 connection with **[program] plan** business shall be levied and assessed by the
9 governing committee of the facility in the manner hereinafter provided in section
10 379.835, subject to such minimum assessment as shall be established by the
11 governing committee.

12 4. Subject to the insurable value thereof, the maximum limits of liability
13 which may be placed through this **[program] plan** are: on any habitational
14 property at one location, ~~[two]~~ **three** hundred thousand dollars; and on any
15 commercial property at one location, ~~[one]~~ **three** million dollars. The facility will
16 endeavor to assist in placement when the requested amount of insurance exceeds
17 the maximum limit of liability available under this program. The word "location"
18 as used herein means real and personal property consisting of and contained in
19 a single building or consisting of and contained in contiguous buildings under one
20 ownership.

379.830. 1. The facility shall, within ~~[five]~~ **three** business days after
2 receipt of the inspection report and application, complete an action report
3 advising that:

4 (1) The risk is acceptable; or

5 (2) The risk is acceptable at a surcharged rate and the improvements
6 necessary before coverage will be provided at an unsurcharged premium rate; or

7 (3) The risk will be acceptable if the improvements noted in the action
8 report are made by the applicant and confirmed by reinspection; or

9 (4) The risk is not acceptable for the reasons stated in the action report.

10 2. In the event a risk is declined because it fails to meet reasonable
11 underwriting standards, the facility will so notify the applicant.

12 (1) Reasonable underwriting standards shall include, but not be limited
13 to, the following:

14 (a) Physical condition of the property, such as its construction, heating,
15 wiring, evidence of previous fires or general deterioration;

16 (b) Its present use or housekeeping, such as vacancy, overcrowding,
17 storage of rubbish or flammable materials.

18 (2) Neighborhood or area location or any environmental hazard beyond the
19 control of the property owner shall not be deemed to be acceptable criteria for
20 declining a risk.

21 3. If the risk is acceptable to the facility, the facility shall notify the
22 applicant, and the licensed producer designated by the applicant, of the
23 acceptability of the risk and the premium to be charged. The facility, upon
24 receipt of the premium, shall within three business days issue the policy to be
25 effective at 12:00 noon of the date of the receipt of the premium, unless a later
26 effective date is specified. The policy shall be forwarded to the applicant with a
27 copy to the licensed producer. The facility shall pay the commission to the
28 licensed producer designated by the applicant.

29 4. In the event the risk is conditionally declined because the property does
30 not meet reasonable underwriting standards but can be improved to meet such
31 standards, the facility shall promptly advise the applicant what improvements
32 noted in the action report should be made to the property. Upon completion of
33 the improvements by the applicant or property owner, the facility, when so
34 notified, will have the property promptly reinspected and thereupon shall process
35 the application in the manner described in subsection 3 of this section.

36 5. If the inspection of the property reveals that there are one or more

37 substandard conditions, surcharges may be imposed in conformity with the filings
38 approved by the director.

39 6. If the facility declines the risk, or agrees to write the coverage sought
40 on condition that the property will be improved, it shall promptly send a copy of
41 both the inspection and action reports to the property owner and the director. At
42 the time the facility sends such reports to the property owner, it shall also
43 explain [his] **the owner's** right to appeal the decision of the facility to the
44 director pursuant to section 379.850 of the [program] **plan** and shall [in writing]
45 set forth **in writing** the procedures to be followed for such appeal.

46 **7. A list of all insureds written through the plan shall be made**
47 **available to anyone who makes a request for such information at a**
48 **nominal charge that has been approved by the director.**

379.840. 1. All policies issued shall be for [basic] property insurance on
2 the forms and in accordance with the rate or rating procedures approved by the
3 director for use with the [program] **plan**. Such policies shall be issued for a term
4 of one year. **At least sixty days prior to use, all policies, rates, and forms**
5 **of any kind, and underwriting guidelines used by the facility shall be**
6 **submitted to the director for approval.**

7 **2. The facility and all policies issued by the facility shall be**
8 **subject to the unfair claims settlement practices act, sections 375.100**
9 **to 375.1018, and the unfair trade practice act, sections 375.930 to**
10 **375.948.**

379.845. 1. The facility shall not cancel a policy or binder issued under
2 the [program] **plan** without approval of the governing committee except in case
3 of:

4 (1) Evidence of incendiarism (meaning arson by or at the direction of the
5 insured); or

6 (2) For nonpayment of premium; or

7 (3) Fraud or material misrepresentation; or

8 (4) A finding by the facility on the basis of satisfactory evidence that
9 changes in the physical condition of the property or other changed conditions
10 make the risk uninsurable. **A copy of the findings shall be provided by the**
11 **facility to the director ten days prior to the notice of cancellation being**
12 **sent to the insured.**

13 2. Any notice of cancellation or notice of nonrenewal of a policy or binder
14 issued under the [program] **plan**, together with a statement of the reason

15 therefor, shall be sent to the insured and a copy retained by the facility. **The**
16 **notice shall state the actual reason for proposing the action, the**
17 **statement of reason to be sufficiently clear and specific so that a person**
18 **of average intelligence can identify the basis for the facility's decision**
19 **without further inquiry. Generalized terms shall not suffice to meet**
20 **this requirement.** Any such notice shall be sent not less than [thirty] **sixty**
21 days prior to the cancellation or nonrenewal of any risk under the [program]
22 **plan** to allow ample time for an application for new coverage to be made and a
23 new policy to be written under the [program] **plan**.

24 3. Any cancellation or nonrenewal notice to the insured relating to a
25 policy or binder issued under the [program] **plan** shall contain the procedures for
26 obtaining an inspection under the [program] **plan** and shall be accompanied by
27 a statement that the insured has a right of appeal as hereinafter provided.

379.850. 1. Any applicant may appeal a decision of the facility relating
2 to the conditions for acceptance **or denial** of coverage to the director, in writing,
3 within thirty days from the decision of the facility.

4 2. Other than as provided in subsection 1 of this section, any applicant or
5 insurer shall have the right of appeal to the governing committee. A decision of
6 the committee may be appealed to the director, in writing, within thirty days from
7 the action or decision of the committee.

379.855. 1. Commission under the [program] **plan** shall be twelve
2 percent on new business and ten percent on renewal business on the policy
3 premium and shall be paid to the licensed producer designated by the applicant.

4 2. If a licensed producer is not designated, the commission shall be
5 deposited by the facility in a fund to be held by the director to be applied to the
6 state of Missouri contribution as provided in Section 1223, Para (1), of U.S. Public
7 Law 90-448. One year after termination of the [program] **plan**, any funds so held
8 by the director and not applied as above set out shall be paid over to the
9 treasurer of the state of Missouri as general revenue.

379.860. 1. This [program] **plan** shall be administered by a governing
2 committee (hereinafter referred to as "the committee") of the facility, subject to
3 the **direct** supervision of the director, and operated by a manager appointed by
4 the committee.

5 2. The committee shall consist of [thirteen] **fifteen** members:

6 (1) Ten members shall be elected from the following:

7 American Insurance Association, two;

8 Property Casualty Insurers Association of America, two;
9 National Association of Mutual Insurance Companies, one;
10 Missouri Insurance Coalition, one;
11 All other stock insurers, two;
12 All other nonstock insurers, two;
13 (2) [Three] **Five** members shall be appointed by the director from each
14 of the following:

15 Missouri insurer, one;
16 Licensed agent of an insurer, two;
17 **Consumer representative, two.**
18 Not more than one insurer in a group under the same management or
19 ownership shall serve on the committee at the same time.

20 3. In case of a vacancy on the governing committee the director shall
21 appoint a representative to such vacancy pending the designation or election as
22 provided in the [program] **plan**.

379.865. 1. There shall be an annual meeting of the insurers and
2 members of the governing committee on a date fixed by the committee **and**
3 **approved by the director.**

4 2. A special meeting may be called at such time and place designated by
5 the committee or upon the written request to the committee of any **committee**
6 **member or any** ten insurers, not more than one of which may be in a group
7 under the same management or ownership.

8 3. Twenty days' notice of such annual or special meeting shall be given in
9 writing by the committee to insurers **and committee members**. A majority of
10 the insurers shall constitute a quorum. Voting by proxy shall be
11 permitted. Notice of any meeting shall be accompanied by an agenda for such
12 meeting.

13 4. Any matter may be proposed and voted upon by mail, provided such
14 procedure is unanimously authorized by the members of the committee present
15 and voting at any meeting of the committee. If so approved by the committee,
16 notice of any proposal shall be mailed to the **committee members and** insurers
17 not less than twenty days prior to the final date fixed by the committee for voting
18 thereon.

19 5. At any regular or special meeting at which the vote of the insurers is
20 or may be required on any proposal or any vote of the insurers which may be
21 taken by mail on any proposal, such votes shall be cast and counted on a

22 weighted basis in accordance with each insurer's premiums written. On any
23 proposal, deemed by the committee to relate exclusively to habitational or
24 exclusively to commercial business, the votes shall be cast and counted on a
25 weighted basis in accordance with each insurer's respective habitational or
26 commercial premiums written, as the case may be. A proposal shall become
27 effective when approved by at least two-thirds of the votes cast on such weighted
28 basis.

379.870. 1. The committee shall meet as often as may be required to
2 perform the general duties of administration of the program or on the call of the
3 director.

4 2. The committee shall be empowered to appoint a manager, who shall
5 serve at the pleasure of the committee **and the director**, to budget expenses,
6 levy assessments, disburse funds, and perform all other duties provided herein
7 or necessary or incidental to the proper administration of the program. The
8 adoption of or substantive changes in pension plans or employee benefit programs
9 shall be subject to approval of **committee members**, insurers, **and the**
10 **director**. Assessments upon each insurer shall be levied on the basis of its
11 premiums written.

12 3. Annually the manager shall prepare an operating budget which shall
13 be subject to approval of the committee **and the director**. Such budget shall be
14 furnished to the **members and** insurers after approval. Any contemplated
15 expenditure in excess of or not included in the annual budget shall require prior
16 approval by the committee **and the director**.

17 4. The committee shall furnish to **committee members**, all insurers, and
18 [to] the director a written report of operations annually in such form and detail
19 as the [committee] **director** may determine.

20 5. The presence of [seven] **nine** members of the committee, at least five
21 of whom shall be insurers, shall constitute a quorum.

22 6. The committee shall appoint an underwriting committee to review with
23 the manager of the [program] **plan** risks which have been submitted for
24 insurance and may appoint such other committees as it may deem
25 advisable. **The director is to be informed in writing of the appointment**
26 **of all committees.**

379.875. 1. The facility shall separately code and maintain separate
2 statistics on business written in accordance with the foregoing [program] **plan**
3 and shall make reports thereon as may be required by the committee and

4 director.

5 2. The manager shall submit annually or at such other periods as may be
6 designated by the director to the committee, the director and the Secretary of
7 Housing and Urban Development, a report setting forth the number of requests
8 for inspections, the number of risks inspected, the number of policies written, the
9 number of risks conditionally accepted and reinspections made, the number of
10 risks declined, **the number and amount of all claims submitted, denied,**
11 **and paid**, and such other information as the director may request.

 379.880. All insurers agree to undertake a continuing public education
2 program, in cooperation with producers and others, to assure that the [basic
3 property insurance inspection and placement program] **FAIR plan** receives
4 adequate public attention.

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Bill

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