
SENATE BILL 5420

State of Washington

64th Legislature

2015 Regular Session

By Senators Baumgartner and Braun

Read first time 01/21/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to introducing private competition in industrial
2 insurance coverage; amending RCW 51.16.140, 51.32.073, 51.44.010,
3 51.44.020, and 51.44.030; adding new sections to chapter 51.08 RCW;
4 adding a new section to chapter 48.19 RCW; adding new sections to
5 chapter 51.44 RCW; adding a new section to chapter 51.16 RCW; adding
6 a new chapter to Title 51 RCW; creating new sections; and providing
7 an effective date.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the vast
10 majority of states use competition to maximize efficiency in their
11 workers' compensation programs. Private sector competition in
12 providing workers' compensation insurance has been effective in
13 reducing premium costs, maximizing program efficiency, and creating
14 innovative safety programs to protect all employees. Therefore, the
15 purposes of this act are to:

16 (1) Create an efficient and cost-effective industrial insurance
17 system for the benefit of both employers and employees by introducing
18 competition into the system through a choice of insurance carriers
19 from whom employers may purchase industrial insurance;

20 (2) Provide workers the benefits of safety systems developed by
21 both private enterprise and by government;

1 (3) Improve the state's economic climate by providing the private
2 sector with the opportunity to engage in the industrial insurance
3 business with appropriate standards and oversight;

4 (4) Eliminate a government monopoly with respect to industrial
5 insurance choices for small employers and provide private sector
6 insurance choices for all employers; and

7 (5) By July 1, 2017, make Washington a state in which employers
8 may choose to self-insure, obtain private sector industrial
9 insurance, or purchase industrial insurance from the Washington state
10 industrial insurance fund.

11 NEW SECTION. **Sec. 2.** (1) The joint legislative task force on
12 private competition for industrial insurance is established. The task
13 force consists of the following members:

14 (a) One member from each major caucus of the house of
15 representatives, appointed by the speaker of the house of
16 representatives;

17 (b) One member from each major caucus of the senate, appointed by
18 the president of the senate; and

19 (c) The following members, appointed jointly by the president of
20 the senate and the speaker of the house of representatives:

21 (i) Four members representing employers, selected from
22 nominations submitted by statewide business organizations. At least
23 one of the members must represent small business, at least one of the
24 members must represent an association with a retrospective rating
25 program, and at least one of the members must be a self-insured
26 employer under Title 51 RCW;

27 (ii) Two members representing insurers, selected from nominations
28 submitted by statewide insurance organizations; and

29 (iii) Three members representing workers. One member must be an
30 employee of a self-insured employer, and at least one member must be
31 employed by an employer with fewer than twenty employees.

32 (2) The task force must develop proposed legislation to eliminate
33 Washington's monopoly of the industrial insurance fund by conforming
34 current statutes to make them consistent with the provisions
35 contained in this act, including the transfer of funds under section
36 9 of this act. The task force must provide its recommendations to the
37 legislature by December 1, 2015.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.08
2 RCW to read as follows:

3 "Insurer" means:

4 (1) The state fund established in section 6 of this act;

5 (2) Any private company, corporation, mutual association, or
6 reciprocal or interinsurance exchange that meets the requirement of
7 section 13 of this act; or

8 (3) Any employer to whom a certificate of qualification to self-
9 insure has been issued under RCW 51.14.030.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.08
11 RCW to read as follows:

12 "State fund" means the Washington state industrial insurance fund
13 as established in section 6 of this act.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.08
15 RCW to read as follows:

16 "Commissioner" means the insurance commissioner as defined in RCW
17 48.02.010.

18 NEW SECTION. **Sec. 6.** (1) The Washington state industrial
19 insurance fund is established for the purpose of insuring employers
20 for their liability arising out of this title beginning July 1, 2017.

21 (2) The functions of the state fund are:

22 (a) To confer with and solicit employers and to handle, audit,
23 and enforce collection of premiums, assessments, and fees of
24 employers insured with it;

25 (b) To receive, handle, and process the claims of workers and
26 beneficiaries of workers injured in the employ of employers insured
27 with the state fund and to issue warrants for the payment of its
28 obligations; and

29 (c) To perform all other functions that the laws of this state
30 authorize an industrial insurance insurer to perform and that are
31 necessary or appropriate to carry out the functions authorized,
32 including securing reinsurance for any risk insured by the state
33 fund.

34 (3) The state fund in its own name may sue and be sued in all
35 actions arising out of any act or omission in connection with its
36 business affairs, and is entitled to appear as a party in any

1 proceedings involving claims payable by the state fund under this
2 title.

3 (4) The state fund must allocate revenues received from its
4 investments, other than revenues allocated for the payment of
5 pensions, to reduce the premiums for employers insured by the state
6 fund and must apply, whenever possible, for a deviation as provided
7 in section 12 of this act from manual rates filed by the licensed
8 rating organization so that its charges for industrial insurance are
9 the lowest possible rates necessary to maintain the actuarial
10 solvency of the state fund.

11 (5) The state fund must participate in the Washington insurance
12 guaranty association under chapter 48.32 RCW in the same manner as
13 any other industrial insurance insurer.

14 (6) The state fund must charge premiums in accordance with this
15 title and based on the rates filed by the licensed rating
16 organization and approved by the commissioner.

17 (7) The state fund must participate in the assigned risk plan
18 under section 12 of this act.

19 (8) The state fund may acquire, lease, rent, own, and manage real
20 property. It may purchase, rent, lease, or otherwise acquire for its
21 use all supplies, materials, equipment, and services necessary to
22 carry out its functions. It may sell or otherwise dispose of any
23 property acquired under this subsection.

24 (9) The state fund must pay all taxes and fees as any other
25 insurer meeting the requirements of section 13 of this act.

26 NEW SECTION. **Sec. 7.** (1) The state fund created in section 6 of
27 this act is governed by policies established by a board of five
28 directors appointed by the governor and approved by the senate. Each
29 member must be a policyholder of the state fund. Two of the members
30 must represent a business with twenty or fewer employees at the time
31 of appointment.

32 The initial terms of the board members are: One member serves for
33 two years, two members serve for four years, and two members serve
34 for six years. Thereafter, each member serves a term of six years. A
35 member may not serve more than two consecutive terms. A director
36 holds office until the appointment and qualification of a successor.

37 (2) The board of directors must:

38 (a) Elect a chair from among its members to serve for the
39 following calendar year;

1 (b) Meet not less than monthly to consider and act on the affairs
2 of the state fund;

3 (c) Establish the policies for the operation of the state fund
4 consistent with all applicable provisions of law; and

5 (d) Employ a manager to manage the daily operations of the state
6 fund.

7 (3) The manager is not a voting member of the board of directors
8 but must act at the will of and in support of the board of directors
9 and provide staff support as required by the board of directors to
10 carry out its activities.

11 (4) A member of the board of directors may not have any pecuniary
12 interest, other than an incidental interest which is disclosed and
13 made a matter of public record at the time of appointment to the
14 board, in any corporation or other business entity doing business as
15 an industrial insurance insurer.

16 (5) A majority of the members of the board constitute a quorum
17 for the transaction of business.

18 NEW SECTION. **Sec. 8.** The state fund must be under the direct
19 supervision of a manager who is selected and employed at the
20 discretion of the board of directors. The salary of the manager is
21 fixed by the board of directors. The manager must report at least
22 annually to the board of directors, the governor, and the legislature
23 on the state of the state fund and must include in the report a
24 review of its operations for the previous twelve months.

25 NEW SECTION. **Sec. 9.** The treasurer must transfer to the state
26 fund the assets and liabilities of the following funds on July 1,
27 2017:

28 (1) The accident fund under RCW 51.44.010;

29 (2) The medical aid fund under RCW 51.44.020;

30 (3) The reserve fund under RCW 51.44.030; and

31 (4) All other assets and liabilities held by the industrial
32 insurance division of the department of labor and industries under
33 this title on July 1, 2017, except the supplemental pension fund and
34 any other funds pertaining to the regulatory functions of the
35 department.

36 NEW SECTION. **Sec. 10.** (1) Beginning July 1, 2017, all employers
37 required to pay industrial insurance benefits, medical aid, and

1 supplemental pension fees to the industrial insurance division of the
2 department under this title must become insureds of the state fund
3 until: (a) The employer elects to secure otherwise the payment of
4 industrial insurance benefits under this title; or (b) the employer
5 receives notice from the state fund of the termination or nonrenewal
6 of insurance.

7 (2) All liability accruing under the law in effect until July 1,
8 2017, for employers paying premiums to the industrial insurance
9 division of the department under this title is transferred on July 1,
10 2017, to the state fund, together with liabilities for all expenses,
11 claim costs, administrative costs, and all other obligations arising
12 out of the operations of the division and having accrued until July
13 1, 2017.

14 (3) The powers, duties, and functions of the industrial insurance
15 division relating to insurance coverage, actuarial computations,
16 claims management, premium collection, accounting, and all other
17 powers necessary to administer the state fund as an insurer, that are
18 not otherwise transferred by this chapter, are vested in the state
19 fund as of July 1, 2017.

20 NEW SECTION. **Sec. 11.** The state of Washington is not liable
21 beyond the assets of the state fund for any obligations of the state
22 fund. The state fund must operate on a parity with other insurers,
23 other than self-insurers, and must be self-supporting and without
24 subsidy of any kind. The state fund has the authority to acquire any
25 equipment, supplies, or other personal or real property, and employ
26 personnel as may be reasonably necessary to solicit and provide
27 industrial insurance, and take all actions to enable it to be fully
28 competitive in offering industrial insurance. The state fund is
29 subject to the same regulation, examination, reporting requirements,
30 and disclosure as all other insurers other than self-insurers
31 providing insurance under this title.

32 All moneys received by and under the supervision and control of
33 the state fund must be deposited and maintained by the state fund.
34 Disbursements from the state fund for all the operating costs of the
35 fund and for payment of all claims obligations must be on
36 authorization of the manager or a duly authorized representative of
37 the manager.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 48.19
2 RCW to read as follows:

3 (1) For the purposes of this chapter, the term "industrial
4 insurance insurer" includes an insurer authorized to insure the
5 liabilities defined by Title 51 RCW and includes the state fund as
6 established by section 6 of this act, but does not include any
7 employer, or any other insurer authorized to provide insurance in
8 this state that insures a portion of the liability arising from this
9 title for an employer that is self-insured. However, chapter 48.22
10 RCW does not apply to industrial insurance unless specified. When
11 provisions of this section conflict with other provisions of this
12 title, the provisions of this section control.

13 (2) The commissioner must issue a certificate of authority to be
14 an industrial insurance insurer if the insurer meets the requirements
15 to be licensed to sell insurance in this state and meets the
16 applicable provisions of this title and Title 51 RCW. The
17 commissioner must perform all duties required under this title to
18 ensure that each insurer continues to meet the requirements of the
19 applicable provisions of this title and Title 51 RCW.

20 (3) The commissioner must designate a licensed rating
21 organization to file with the commissioner, for approval, a manual of
22 classifications and rules, rating plans, policy forms and provisions,
23 a payroll limitation, and a statistical reporting plan which provides
24 data adequate for rate making. Every insurer must be a member of the
25 licensed rating organization designated by the commissioner and must
26 adhere to the approved filings required by this section.

27 (4) The licensed rating organization on behalf of and in lieu of
28 filings by its members must file manual rates with the commissioner
29 for approval. Any member of the rating organization may make written
30 application to the commissioner for approval of uniform percentage
31 deviations from the manual rates filed by the rating organization and
32 approved by the commissioner.

33 (5) The state fund is entitled to membership on any committee
34 established in this state by the rating organization.

35 (6) All manual rates filed by the rating organization are subject
36 to a payroll limitation approved by the commissioner which must be
37 adjusted annually by the percentage change in the state average
38 annual wage determined under RCW 50.04.355.

39 (7) The commissioner must establish an assigned risk plan for all
40 industrial insurance insurers.

1 (8) This chapter does not prohibit or regulate the payment of
2 dividends and savings on unabsorbed premium deposits allowed or
3 returned by industrial insurance insurers to their policyholders,
4 members, or subscribers. A plan returned by insurers to their
5 policyholders, members, or subscribers is not a rating plan or
6 system.

7 NEW SECTION. **Sec. 13.** (1) Each insurer offering to sell
8 industrial insurance meeting the requirements of this title, except
9 for employers that are self-insured, or insurers providing partial
10 reinsurance for a self-insurer, must hold a certificate of authority
11 issued by the commissioner under chapter 48.05 RCW permitting it to
12 provide industrial insurance. Before issuing the certificate, the
13 commissioner must certify that the insurer has the capacity to
14 provide adequate safety engineering, loss prevention, and claims
15 management services for all employers the insurer insures. Such a
16 certificate is not valid if the insurer fails to maintain a location
17 within the state where applications for industrial insurance benefits
18 may be made and maintain with the commissioner a list of the
19 locations and telephone numbers where information may be obtained
20 about all appropriate matters relating to claims.

21 (2) Each insurer may refuse to provide industrial insurance for
22 up to eight percent of employers who apply for insurance with the
23 insurer except that each insurer must participate in the assigned
24 risk plan as provided in section 12 of this act. Any insurer failing
25 to provide insurance as required by the assigned risk plan is not
26 permitted to sell industrial insurance in this state.

27 (3) On the effective date of this section, the state fund must be
28 issued a certificate of authority from the commissioner. Thereafter,
29 the state fund is required to maintain the certificate and meet all
30 of the applicable provisions of Title 48 RCW and this title like any
31 other insurer.

32 NEW SECTION. **Sec. 14.** A new section is added to chapter 51.44
33 RCW to read as follows:

34 A revolving fund to be known and designated as the industrial
35 insurance administrative fund is created in the state treasury. The
36 commissioner is the administrator of the fund. The industrial
37 insurance administrative fund is established to provide for the
38 payment of all expenses of the board of industrial insurance appeals

1 and the commissioner with respect to the administration of their
2 respective duties under this title and those sections of Title 48 RCW
3 governing industrial insurance. There must be separate appropriations
4 approved by the legislature and the governor for the board and the
5 commissioner. Any money appropriated from the general fund for the
6 uses and purposes of the administrative fund must be placed in the
7 administrative fund.

8 NEW SECTION. **Sec. 15.** A new section is added to chapter 51.44
9 RCW to read as follows:

10 (1) The commissioner must periodically calculate and collect from
11 insurers assessments that, with the interest earned, are sufficient
12 to cover the administrative costs described in sections 14 and 17 of
13 this act. The time and manner of collecting assessments must be set
14 forth in rules adopted by the commissioner under chapter 34.05 RCW.

15 (2) The commissioner must prepare, as soon as is practicable
16 after July 1st each year, a line item budget for the industrial
17 insurance administrative fund for the succeeding fiscal year. The
18 budget must be based upon the actual expenditures of the preceding
19 fiscal year and a reasonable estimate of expenses for the succeeding
20 year. This budget must be adopted in accordance with chapter 34.05
21 RCW.

22 (3) The assessment of each insurer must be an amount bearing the
23 same ratio to the total administrative costs that each insurer's
24 adjusted premium bears to the aggregated adjusted premium of all
25 insurers. As used in this subsection "adjusted premium" means:

26 (a) For insurers, other than self-insurers, the direct earned
27 premium for industrial insurance under this title, determined under
28 uniform rules adopted by the commissioner; and

29 (b) For self-insurers, the premium that would have been incurred
30 had it insured its liability under this title with the state fund,
31 determined under uniform rules adopted by the commissioner.

32 (4) The assessment for each insurer must be calculated in the
33 following manner:

34 (a) The assessment for each insurer must be based on the adjusted
35 premium for the period immediately preceding the period to which the
36 assessment will apply;

37 (b) Until July 1, 2018, the periodic assessment must be adjusted
38 after each fiscal year to reflect the actual adjusted premium of each
39 insurer for that fiscal year, as determined by the commissioner;

1 (c) Notwithstanding any provision of this section, each insurer
2 may be assessed annually a minimum amount not to exceed five hundred
3 dollars, as determined by the commissioner; and

4 (d) Beginning July 1, 2018, assessments must be determined for
5 insurers on a fiscal year basis and collected annually.

6 (5) Assessments are payable in full within thirty days of the
7 notice of assessment. If any insurer fails to pay the assessment by
8 the date due, interest may be charged on all past due amounts at a
9 reasonable market rate as may be established from time to time.

10 (6) In no event may any assessment made under this section exceed
11 four percent per annum of the total taxable industrial insurance
12 premiums in this state for the year immediately preceding the
13 assessment.

14 (7) Any amount resulting from or anticipated for expenditures
15 from the industrial insurance administrative fund that arises from
16 the uncorrected default of a self-insurer must be assessed only upon
17 self-insurers.

18 NEW SECTION. **Sec. 16.** Insurers other than self-insurers may
19 insure the industrial insurance obligations of employers as a group
20 if the following conditions are met:

21 (1) All the employers in the group are members of a statewide
22 organization that has been in existence for at least four years;

23 (2) The organization exists primarily for a purpose other than
24 that of obtaining or offering industrial insurance coverage or
25 insurance-related services;

26 (3) The group must be composed of employers who are substantially
27 similar considering the services or activities performed by the
28 employees of those employers; and

29 (4) The formation and operation of the group program in the
30 organization will improve accident prevention and claims management
31 for the employers in the group.

32 NEW SECTION. **Sec. 17.** A new section is added to chapter 51.16
33 RCW to read as follows:

34 It is a default whenever industrial insurance benefits due under
35 this title are not paid as required. Industrial insurance benefits
36 due must be paid as follows:

37 (1) When the default results from the failure of an employer to
38 secure the payment of industrial insurance benefits due under this

1 title, industrial insurance benefits must be paid by the commissioner
2 from the industrial insurance administrative fund. In addition to any
3 penalty imposed under RCW 51.48.010, the defaulting employer is
4 liable for payment into the industrial insurance administrative fund
5 the amounts paid from the fund by the commissioner plus market
6 interest on any outstanding balance. For the purpose of enforcing
7 this liability, the commissioner, for the benefit of the industrial
8 insurance administrative fund, is subrogated to all of the rights of
9 the person receiving the industrial insurance benefits;

10 (2) When the default results from the failure of a self-insurer
11 to make industrial insurance payments, industrial insurance benefits
12 must be paid by the commissioner from the industrial insurance
13 administrative fund only after the moneys available from the bonds or
14 other security provided under the requirements of this title have
15 been exhausted. The defaulting self-insurer is liable for payment
16 into the industrial insurance administrative fund the amounts paid
17 from the fund by the commissioner plus market interest on any unpaid
18 balance. For the purpose of enforcing this liability, the
19 commissioner, for the benefit of the industrial insurance
20 administrative fund, is subrogated to all of the rights of the person
21 receiving the industrial insurance benefits;

22 (3) When the default results from the failure of an insolvent
23 insurer as defined in RCW 48.32.030, to make industrial insurance
24 benefit payments, industrial insurance benefits must be paid by the
25 commissioner from the industrial insurance administrative fund. The
26 Washington insurance guaranty association, as defined by chapter
27 48.32 RCW, is liable for payment into the industrial insurance
28 administrative fund the amounts paid from the fund by the
29 commissioner in lieu of paying the amounts of industrial insurance
30 benefits directly to the claimant;

31 (4) In cases other than those involving insurer insolvency when
32 industrial insurance benefits are not timely paid or where the
33 payment of industrial insurance benefits are delayed as a result of a
34 dispute as to which insurer is responsible for the payment of
35 industrial insurance benefits, the payments must be made from the
36 industrial insurance administrative fund and the commissioner has the
37 right of recovery from the party or parties ultimately deemed
38 responsible for the payment of the industrial insurance benefits; and

39 (5) The commissioner may purchase insurance for the industrial
40 insurance administrative fund to pay for defaults under this section.

1 The administrative fund must be used to pay for the insurance, and
2 the liability of insurers is limited to the liabilities not paid by
3 the insurance. The commissioner must actively pursue legal action to
4 collect payments to the industrial insurance administrative fund as
5 set forth in this section.

6 NEW SECTION. **Sec. 18.** The accident and loss experience records
7 and related data of the division of industrial insurance, for periods
8 before the effective date of this section, must be made available to
9 the licensed rating organization designated by the insurance
10 commissioner under section 12 of this act to assist in making
11 workers' compensation rates. The division of industrial insurance
12 must be reimbursed for the actual reasonable cost of reproduction and
13 delivery of the records and data.

14 **Sec. 19.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to
15 read as follows:

16 ~~((1) Every employer who is not a self-insurer shall deduct from~~
17 ~~the pay of each of his or her workers one half of the amount he or~~
18 ~~she is required to pay, for medical benefits within each risk~~
19 ~~classification. Such amount shall be periodically determined by the~~
20 ~~director and reported by him or her to all employers under this~~
21 ~~title: PROVIDED, That the state governmental unit shall pay the~~
22 ~~entire amount into the medical aid fund for volunteers, as defined in~~
23 ~~RCW 51.12.035, and the state apprenticeship council shall pay the~~
24 ~~entire amount into the medical aid fund for registered apprentices or~~
25 ~~trainees, for the purposes of RCW 51.12.130. The deduction under this~~
26 ~~section is not authorized for premiums assessed under RCW 51.16.210.~~

27 ~~(2))~~ It ~~((shall be))~~ is unlawful for the employer, unless
28 specifically authorized by this title, to deduct or obtain any part
29 of the premium or other costs required to be by him or her paid from
30 the wages or earnings of any of his or her workers, and the making of
31 or attempt to make any such deduction ~~((shall be))~~ is a gross
32 misdemeanor.

33 **Sec. 20.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to
34 read as follows:

35 ~~(1) ((Except as provided in subsection (2) of this section, each~~
36 ~~employer shall retain from the earnings of each worker that amount as~~
37 ~~shall be fixed from time to time by the director, the basis for~~

1 ~~measuring said amount to be determined by the director. The money so~~
2 ~~retained shall be matched in an equal amount by each employer, and~~
3 ~~all such moneys shall be remitted to the department in such manner~~
4 ~~and at such intervals as the department directs and shall be placed~~
5 ~~in the supplemental pension fund: PROVIDED, That the state~~
6 ~~apprenticeship council shall pay the entire amount into the~~
7 ~~supplemental pension fund for registered apprentices or trainees~~
8 ~~during their participation in supplemental and related instruction~~
9 ~~classes.)) Each insurer must remit to the commissioner for the~~
10 ~~supplemental pension fund an amount to be determined by the~~
11 ~~commissioner.~~ The moneys so collected shall be used exclusively for
12 the additional payments from the supplemental pension fund prescribed
13 in this title and for the amount of any increase payable under the
14 provisions of RCW 51.32.075(~~(, as now or hereafter amended,)~~) and
15 (~~shall~~) may be no more than necessary to make such payments on a
16 current basis. The (~~department~~) commissioner may require a self-
17 insurer to make any additional payments which are payable from the
18 supplemental pension fund and thereafter such self-insurer shall be
19 reimbursed therefrom.

20 (2) None of the amount assessed for the supplemental pension fund
21 (~~under RCW 51.16.210~~) may be retained from the earnings of workers
22 (~~covered under RCW 51.16.210~~).

23 **Sec. 21.** RCW 51.44.010 and 1961 c 23 s 51.44.010 are each
24 amended to read as follows:

25 Until July 1, 2017, there (~~shall~~) must be, in the office of the
26 state treasurer, a fund to be known and designated as the "accident
27 fund."

28 **Sec. 22.** RCW 51.44.020 and 1961 c 23 s 51.44.020 are each
29 amended to read as follows:

30 Until July 1, 2017, there (~~shall~~) must be, in the office of the
31 state treasurer, a fund to be known and designated as the "medical
32 aid fund."

33 **Sec. 23.** RCW 51.44.030 and 1961 c 23 s 51.44.030 are each
34 amended to read as follows:

35 Until July 1, 2017, there (~~shall~~) must be, in the office of the
36 state treasurer, a fund to be known and designated as the "reserve
37 fund."

1 NEW SECTION. **Sec. 24.** Sections 6 through 8, 10, 11, 13, and 16
2 of this act constitute a new chapter in Title 51 RCW.

3 NEW SECTION. **Sec. 25.** Sections 3 through 17, 19, and 20 through
4 23 of this act take effect July 1, 2017.

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