

Bill No. CS for SB 1712

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Forman moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 30, between lines 28 and 29,		
15			
16	insert:		
17	Section 16. Effective July 1, 1999, section 427.802,		
18	Florida Statutes, is amended to read:		
19	427.802 Definitions.--As used in this part:		
20	(1) "Assistive technology devices" means manual		
21	wheelchairs, motorized wheelchairs, motorized scooters,		
22	voice-synthesized computer modules, optical scanners, talking		
23	software, braille printers, environmental control devices for		
24	use by a person with quadriplegia, motor vehicle adaptive		
25	transportation aids, <u>devices that enable persons with severe</u>		
26	<u>speech disabilities to in effect speak, personal transfer</u>		
27	<u>systems, and specialty beds, including a demonstrator, that a</u>		
28	consumer purchases or accepts transfer of in this state for		
29	use by a person with a disability.		
30	(2) " <u>Assistive Technology Device Warranty Act rights</u>		
31	<u>period" means the period ending 1 year after first delivery of</u>		

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1 the assistive technology device to the consumer or the  
 2 manufacturer's express written warranty, whichever is longer.

3 (3)(2) "Person with a disability" means any person who  
 4 has one or more permanent physical or mental limitations that  
 5 restrict his or her ability to perform the normal activities  
 6 of daily living and impede his or her capacity to live  
 7 independently.

8 (4)(3) "Assistive technology device dealer" means a  
 9 business entity that is primarily engaged ~~person who is~~ in the  
 10 ~~business of selling or leasing of~~ assistive technology  
 11 devices. As used in this subsection, the term "primarily"  
 12 means no less than 30 percent of the business entity's gross  
 13 sales in the previous fiscal year.

14 (5)(4) "Assistive technology device lessor" means a  
 15 person who leases an assistive technology device to a  
 16 consumer, or holds the lessor's rights, under a written lease.

17 (6)(5) "Collateral costs" means expenses incurred by a  
 18 consumer in connection with the repair of a nonconformity,  
 19 including the costs of obtaining an alternative assistive  
 20 technology device.

21 (7)(6) "Consumer" means any of the following:

22 (a) The purchaser of an assistive technology device,  
 23 if the assistive technology device was purchased from an  
 24 assistive technology device dealer or manufacturer for  
 25 purposes other than resale.

26 (b) A person to whom the assistive technology device  
 27 is transferred for purposes other than resale, if the transfer  
 28 occurs before the expiration of an express warranty applicable  
 29 to the assistive technology device.

30 (c) A person who may enforce the warranty.

31 (d) A person who leases an assistive technology device

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1 from an assistive technology device lessor under a written  
2 lease.

3 (8)~~(7)~~ "Demonstrator" means an assistive technology  
4 device used primarily for the purpose of demonstration to the  
5 public.

6 (9) "Department" means the Department of Agriculture  
7 and Consumer Services.

8 (10)~~(8)~~ "Early termination cost" means any expense or  
9 obligation that an assistive technology device lessor incurs  
10 as a result of both the termination of a written lease before  
11 the termination date set forth in that lease and the return of  
12 an assistive technology device to a manufacturer pursuant to  
13 this section. The term includes a penalty for prepayment  
14 under a financial arrangement.

15 (11)~~(9)~~ "Early termination saving" means any expense  
16 or obligation that an assistive technology device lessor  
17 avoids as a result of both the termination of a written lease  
18 before the termination date set forth in the lease and the  
19 return of an assistive technology device to a manufacturer  
20 pursuant to this section. The term includes an interest  
21 charge that the assistive technology device lessor would have  
22 paid to finance the assistive technology device or, if the  
23 assistive technology device lessor does not finance the  
24 assistive technology device, the difference between the total  
25 amount for which the lease obligates the consumer during the  
26 period of the lease term remaining after the early termination  
27 and the present value of that amount at the date of the early  
28 termination.

29 (12)~~(10)~~ "Manufacturer" means a business entity that  
30 manufactures or produces assistive technology devices for sale  
31 and agents of that business entity, including an importer, a

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1 distributor, a factory branch, a distributor branch, and any  
 2 warrantors of the manufacturer's assistive technology device,  
 3 ~~but not~~ including an assistive technology device dealer.

4 (13)~~(11)~~ "Nonconformity" means a condition or defect  
 5 of an assistive technology device which substantially impairs  
 6 the use, value, or safety of the device and which is covered  
 7 by an express warranty applicable to the assistive technology  
 8 device, but does not include a condition or defect that is the  
 9 result of abuse, neglect, or unauthorized modification or  
 10 alteration of the assistive technology device by a consumer.

11 (14)~~(12)~~ "Reasonable attempt to repair" means, within  
 12 the terms of an express warranty applicable to a new assistive  
 13 technology device:

14 (a) A maximum of three efforts by the manufacturer,  
 15 the assistive technology device lessor, or any of the  
 16 manufacturer's authorized assistive technology device dealers  
 17 to repair a nonconformity that is subject to repair under the  
 18 warranty; or

19 (b) The passage of at least 30 cumulative days during  
 20 which the assistive technology device is out of service  
 21 because of a nonconformity that is covered by the warranty.

22 Section 17. Effective July 1, 1999, section 427.803,  
 23 Florida Statutes, is amended to read:

24 427.803 Duty of manufacturer and an assistive  
 25 technology device dealer to conform an assistive technology  
 26 device to the warranty ~~Express warranty.--~~

27 (1) A manufacturer who sells a new assistive  
 28 technology device to a consumer, either directly or through an  
 29 assistive technology device dealer, shall furnish the consumer  
 30 with an express warranty for the assistive technology device.  
 31 The duration of the express warranty must be at least 1 year

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1 after first delivery of the assistive technology device to the  
2 consumer. In the absence of an express warranty from the  
3 manufacturer, the manufacturer is considered to have expressly  
4 warranted to the consumer of an assistive technology device  
5 that, for a period of 1 year after the date of first delivery  
6 to the consumer, the assistive technology device will be free  
7 from any condition or defect that substantially impairs the  
8 value of the assistive technology device to the consumer.

9 (2) If an assistive technology device does not conform  
10 to the warranty and the consumer first reports the problem to  
11 the manufacturer during the Assistive Technology Device  
12 Warranty Act rights period, the manufacturer shall make such  
13 repairs as are necessary to conform the device to the  
14 warranty, irrespective of whether such repairs are made after  
15 the expiration of the Assistive Technology Device Warranty Act  
16 rights period. Such repairs shall be at no cost to the  
17 consumer if reported to the manufacturer or assistive  
18 technology device dealer during the Assistive Technology  
19 Device Warranty Act rights period. Nothing in this paragraph  
20 shall be construed to grant an extension of the Assistive  
21 Technology Device Warranty Act rights period or to expand the  
22 time within which a consumer must file a complaint under this  
23 chapter.

24 (3) Each manufacturer or assistive technology device  
25 dealer shall provide to its consumers conspicuous notice of  
26 the address and phone number for its zone, district, or  
27 regional office for this state in the written warranty or  
28 owner's manual. Within 10 days after the department's written  
29 request, a manufacturer shall forward to the department a copy  
30 of the owner's manual and any written warranty for each make  
31 and model of assistive technology device that it sells in this

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1 state.

2 (4) The manufacturer shall provide to the assistive  
3 technology device dealer and, at the time of acquisition, the  
4 assistive technology device dealer shall provide to the  
5 consumer a written statement that explains the consumer's  
6 rights under this chapter. The written statement shall be  
7 prepared by the department and shall contain a toll-free  
8 number for the department that the consumer can contact to  
9 obtain information regarding the consumer's rights and  
10 obligations under this chapter or to commence arbitration. The  
11 consumer's signed acknowledgment of receipt of materials  
12 required under this subsection shall constitute prima facie  
13 evidence of compliance by the manufacturer and assistive  
14 technology device dealer. The form of the acknowledgments  
15 shall be approved by the department, and the assistive  
16 technology device dealer shall maintain the consumer's signed  
17 acknowledgment for 3 years.

18 (5) A manufacturer or an assistive technology device  
19 dealer shall provide to the consumer, each time the consumer's  
20 assistive technology device is returned after being examined  
21 or repaired under the warranty, a fully itemized, legible  
22 statement of any diagnosis made and all work performed on the  
23 assistive technology device, including, but not limited to, a  
24 general description of the problem reported by the consumer or  
25 an identification of the defect or condition, parts and labor,  
26 the date on which the assistive technology device was  
27 submitted for examination or repair, and the date when the  
28 repair or examination was completed.

29 Section 18. Effective July 1, 1999, section 427.804,  
30 Florida Statutes, is amended to read:

31 427.804 Repair of nonconforming assistive technology

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1 devices; refund or replacement of devices after attempt to  
2 repair; sale or lease of returned device; arbitration;  
3 investigation; limitation of rights.--

4 (1) If a new assistive technology device does not  
5 conform to an applicable express warranty and the consumer  
6 reports the nonconformity to the manufacturer, the assistive  
7 technology device lessor, or any of the manufacturer's  
8 authorized assistive technology device dealers and makes the  
9 assistive technology device available for repair within 1 year  
10 after first delivery or return of the assistive technology  
11 device to the consumer, the nonconformity must be repaired at  
12 no charge to the consumer.

13 (2) If, after a reasonable attempt to repair, the  
14 nonconformity is not repaired, the manufacturer, at the  
15 direction of a consumer as defined in s. 427.802(6)(a)-(c),  
16 must do one of the following:

17 (a) Accept return of the assistive technology device  
18 and replace the assistive technology device with a comparable  
19 new assistive technology device and refund any collateral  
20 costs.

21 (b) Accept return of the assistive technology device  
22 and refund to the consumer and to any holder of a perfected  
23 security interest in the consumer's assistive technology  
24 device, as the interest may appear, the full purchase price  
25 plus any finance charge amount paid by the consumer at the  
26 point of sale, and collateral costs.

27 (c) With respect to a consumer as defined in s.  
28 427.802(6)(d), accept return of the assistive technology  
29 device, refund to the assistive technology device lessor and  
30 to any holder of a perfected security interest in the  
31 assistive technology device, as the interest may appear, the

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1 current value of the written lease, and refund to the consumer  
2 the amount that the consumer paid under the written lease plus  
3 any collateral costs.

4 (3) The current value of the written lease equals the  
5 total amount for which the lease obligates the consumer during  
6 the period of the lease remaining after its early termination  
7 plus the assistive technology device dealer's early  
8 termination costs and the value of the assistive technology  
9 device at the lease expiration date if the lease sets forth  
10 the value, less the assistive technology device lessor's early  
11 termination savings.

12 (4) To receive a comparable new assistive technology  
13 device or a refund due under paragraph (2)(a), a consumer must  
14 offer to the manufacturer of the assistive technology device  
15 having the nonconformity to transfer possession of the  
16 assistive technology device to the manufacturer. No later  
17 than 30 days after the offer, the manufacturer shall provide  
18 the consumer with the comparable assistive technology device  
19 or refund. When the manufacturer provides the comparable  
20 assistive technology device or refund, the consumer shall  
21 return the assistive technology device having the  
22 nonconformity to the manufacturer, along with any endorsements  
23 necessary to transfer real possession to the manufacturer.

24 (5) To receive a refund due under paragraph (2)(b), a  
25 consumer must offer to return the assistive technology device  
26 having the nonconformity to its manufacturer. No later than  
27 30 days after the offer, the manufacturer shall provide the  
28 refund to the consumer. When the manufacturer provides the  
29 refund, the consumer shall return to the manufacturer the  
30 assistive technology device having the nonconformity.

31 (6) To receive a refund due under paragraph (2)(c), an

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1 assistive technology device lessor must offer to transfer  
2 possession of the assistive technology device having the  
3 nonconformity to its manufacturer. No later than 30 days  
4 after the offer, the manufacturer shall provide the refund to  
5 the assistive technology device lessor. When the manufacturer  
6 provides the refund, the assistive technology device lessor  
7 shall provide to the manufacturer any endorsements necessary  
8 to transfer legal possession to the manufacturer.

9 (7) A person may not enforce the lease against the  
10 consumer after the consumer receives a refund due under  
11 paragraph (2)(c).

12 (8) An assistive technology device that is returned by  
13 a consumer or assistive technology device lessor in this  
14 state, or by a consumer or assistive technology device lessor  
15 in another state under a similar law of that state, may not be  
16 sold or leased again in this state, unless full disclosure of  
17 the reasons for return is made to any prospective buyer or  
18 lessee.

19 (9) Each consumer may submit any dispute arising under  
20 this part to the department by completing a complaint form.  
21 The department may investigate the complaint on behalf of the  
22 consumer if reasonable evidence warrants such an action.

23 (10) The department shall process consumer complaints  
24 pursuant to s. 570.544.

25 (11)~~(9)~~ Each consumer may submit any dispute arising  
26 under this part to an alternative arbitration mechanism  
27 established pursuant to chapter 682. Upon notice by the  
28 consumer, all manufacturers must submit to such alternative  
29 arbitration.

30 (12)~~(10)~~ Such alternative arbitration must be  
31 conducted by a professional arbitrator or arbitration firm

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1 appointed under chapter 682 and any applicable rules. These  
2 procedures must provide for the personal objectivity of the  
3 arbitrators and for the right of each party to present its  
4 case, to be in attendance during any presentation made by the  
5 other party, and to rebut or refute such a presentation.

6 (13)~~(11)~~ This part does not limit rights or remedies  
7 available to a consumer under any other law.

8 Section 19. Effective July 1, 1999, section 427.8041,  
9 Florida Statutes, is created to read:

10 427.8041 Assistive technology device dealers  
11 registration; application; exemption; penalties; adoption of  
12 fees and fines; purchase fees.--

13 (1) Each assistive technology device dealer must  
14 register with the department prior to doing business in this  
15 state. The application for registration must be on a form  
16 adopted by the department and must include at least the  
17 following information:

18 (a) The name of the applicant.

19 (b) The name under which the applicant is doing  
20 business.

21 (c) The business address at which the applicant sells  
22 assistive technology devices or in the case of a mobile  
23 assistive technology device business, the home address of the  
24 owner, if different from the business address.

25 (d) Copies of all licenses, permits, and  
26 certifications obtained by the applicant or employees of the  
27 applicant.

28 (2) Any assistive technology device dealer maintaining  
29 more than one place of business must register each separate  
30 location. In such case, fees shall be paid for each place of  
31 business.

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1           (3) Each initial application and renewal application  
2 for registration must be accompanied by a registration fee of  
3 \$300.

4           (4) The department shall issue to each applicant a  
5 registration certificate. In the case of an applicant with  
6 more than one place of business, the department shall issue a  
7 registration certificate for each place of business. The  
8 certificate must show at least the name and address of the  
9 assistive technology device dealer and the registration number  
10 for that place of business. In the case of a mobile assistive  
11 technology device dealer, the certificate must show the home  
12 address of the owner, if different from the business address.  
13 The registration certificate must be posted in a conspicuous  
14 manner in the assistive technology device dealer's place of  
15 business.

16           (5) Any person applying for or renewing a local  
17 occupational license on or after July 1, 1999, to engage in  
18 selling assistive technology devices must exhibit an active  
19 registration certificate from the department before the local  
20 occupational license may be issued or renewed.

21           (6) Each registration must be renewed annually on or  
22 before the expiration date of the current registration. A late  
23 fee of \$25 shall be paid, in addition to the registration fee  
24 or any other penalty, for any registration renewal application  
25 that is received by the department after the expiration date  
26 of the current registration. The department may not issue the  
27 registration until all fees are paid.

28           (7) The department may deny or refuse to renew the  
29 registration of the assistive technology device dealer based  
30 upon a determination that the dealer, or any of its directors,  
31 officers, owners, or general partners:

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1           (a) Have failed to meet the requirements for  
2 registration as provided in this part;

3           (b) Have not satisfied a civil fine, administrative  
4 fine, or other penalty arising out of any administrative or  
5 enforcement action brought by any governmental agency based  
6 upon conduct involving fraud, dishonest dealing, or any  
7 violation of this part;

8           (c) Have had against them any civil, criminal, or  
9 administrative adjudication in any jurisdiction, based upon  
10 conduct involving fraud, dishonest dealing, or any violation  
11 of this part; or

12           (d) Have had a judgment entered against them in any  
13 action brought by the department or the state attorney.

14           (8) All assistive technology device dealers shall  
15 allow department personnel to enter their place of business to  
16 ascertain whether the registration certificate is current. If  
17 department personnel are refused entry or access to the  
18 premises, the department may seek injunctive relief in circuit  
19 court in order to obtain compliance with this subsection.

20           (9) The department may enter an order imposing one or  
21 more of the penalties set forth in subsection (13) if the  
22 department finds that an assistive technology device dealer:

23           (a) Violated or is operating in violation of any of  
24 the provisions of this part or of the rules adopted or orders  
25 issued thereunder;

26           (b) Made a material false statement in any  
27 application, document, or record required to be submitted or  
28 retained under this part;

29           (c) Refused or failed, or any of its principal  
30 officers have refused or failed, after notice, to produce any  
31 document or record or disclose any information required to be

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1 produced or disclosed under this part or the rules of the  
2 department;

3 (d) Made a material false statement in response to any  
4 request or investigation by the department, the Department of  
5 Legal Affairs, or the state attorney; or

6 (e) Has intentionally defrauded the public through  
7 dishonest or deceptive means.

8 (10) Upon a finding as set forth in subsection (12),  
9 the department may enter an order doing one or more of the  
10 following:

11 (a) Issuing a notice of noncompliance pursuant to s.  
12 120.695.

13 (b) Imposing an administrative fine not to exceed  
14 \$5,000 per violation for each act which constitutes a  
15 violation of this part or a rule or order.

16 (c) Directing that the assistive technology device  
17 dealer cease and desist specified activities.

18 (d) Refusing to register or revoking or suspending a  
19 registration.

20 (e) Placing the registrant on probation for a period  
21 of time, subject to such conditions as the department may  
22 specify.

23 (11) The administrative proceedings which could result  
24 in the entry of an order imposing any of the penalties  
25 specified in subsection (10) shall be conducted in accordance  
26 with chapter 120.

27 (12) The department or the state attorney, if a  
28 violation of this part occurs in his or her judicial circuit,  
29 shall be the enforcing authority for purposes of this part and  
30 may bring a civil action in circuit court for temporary or  
31 permanent injunctive relief and may seek other appropriate

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1 civil relief, including a civil penalty not to exceed \$5,000  
2 for each violation, restitution and damages for injured  
3 customers, court costs, and reasonable attorney's fees.

4 (13) The enforcing authority may terminate any  
5 investigation or action upon agreement by the offender to pay  
6 a stipulated civil penalty, to make restitution or pay damages  
7 to customers, or to satisfy any other relief authorized herein  
8 and requested by the department.

9 (14) The remedies provided for in this section shall  
10 be in addition to any other remedy provided by law.

11 (15) Fees and fines collected under this part by the  
12 Department of Agriculture and Consumer Services shall be  
13 deposited in the General Inspection Trust Fund.

14 (16) A \$2 fee shall be collected by the assistive  
15 technology device dealer or assistive technology device lessor  
16 from the consumer at the consummation of the sale or lease of  
17 an assistive technology device. Such fees must be remitted  
18 monthly to the Department of Revenue. All fees, less the cost  
19 of administration, must be transferred monthly to the  
20 Department of Agriculture and Consumer Services for deposit  
21 into the General Inspection Trust Fund to carry out the  
22 provisions of s. 427.8041. The Department of Agriculture and  
23 Consumer Services may use an amount it determines necessary to  
24 purchase expert consultation services to assist in carrying  
25 out the provisions of this act.

26 (17) In fiscal year 1999-2000, the Department of  
27 Agriculture and Consumer Services may use 5 percent of the  
28 fees collected and remitted in that fiscal year by the  
29 assistive technology device dealers or lessors under  
30 subsection (16) and, during each fiscal year thereafter, may  
31 use between 5 percent and 10 percent of such fees collected in

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1 that fiscal year, towards the development of an Assistive  
2 Technology Device Warranty Act Education Program or to  
3 purchase expert consultation services from an entity having  
4 the mission of promoting access to, awareness of, and advocacy  
5 for assistive technology devices and services to:

6 (a) Assist investigators to effectively carry out s.  
7 427.806.

8 (b) Conduct sensitivity training for the department's  
9 staff as it relates to assistive technology to ensure  
10 effective recording of complaints relating to assistive  
11 technology.

12 (c) Assist in the design and strategy of a consumer  
13 education program to educate consumers of assistive technology  
14 devices and assistive technology device dealers on this act as  
15 amended.

16 (18) In addition to pursuing any other remedy, a  
17 consumer may bring an action to recover damages for any injury  
18 caused by a violation of this part. The court shall award a  
19 consumer who prevails in such an action twice the amount of  
20 any pecuniary loss, together with costs, disbursements, and  
21 reasonable attorney's fees, and any equitable relief that the  
22 court determines is appropriate.

23 (19) An assistive technology device dealer that is  
24 required to be registered under this act must keep and  
25 maintain records relating to each sale or lease of assistive  
26 technology devices for a period of 2 years.

27 (20) The department may, at any time during business  
28 hours, enter any business location of an assistive technology  
29 device dealer that is required to be registered under this act  
30 and examine the books and records of the assistive technology  
31 device dealer.

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1           (21) The department may adopt rules in accordance with  
2 chapter 120 to implement this part.

3           Section 20. There is appropriated from the General  
4 Inspection Trust Fund of the Department of Agriculture and  
5 Consumer Services for Fiscal Year 1999-2000 the sum of  
6 \$450,000 for six full-time equivalent positions to administer  
7 this act. This section takes effect July 1, 1999.

8  
9 (Redesignate subsequent sections.)

10

11

12 ===== T I T L E   A M E N D M E N T =====

13 And the title is amended as follows:

14           On page 3, line 8, following the semicolon

15

16 insert:

17           amending s. 427.802, F.S.; providing  
18           definitions; amending s. 427.803, F.S.;  
19           requiring the manufacturer to make repairs  
20           necessary to conform the device to the  
21           warranty; providing notice of the dealer's and  
22           manufacturer's address and telephone number;  
23           providing procedures for filing claims;  
24           amending s. 427.804, F.S.; allowing consumers  
25           to submit disputes to the Department of  
26           Agriculture and Consumer Services; authorizing  
27           the department to investigate complaints;  
28           creating s. 427.8041, F.S.; providing for  
29           registration of dealers, for fees, and for  
30           application procedures; providing grounds for  
31           refusal or denial of registration; requiring

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1 dealers to allow department personnel to enter  
2 their places of business; authorizing the  
3 department to impose penalties; authorizing the  
4 department or the state attorney to bring civil  
5 actions for violations of the act; providing  
6 for fees and fines collected to be deposited  
7 into the General Inspection Trust Fund;  
8 authorizing dealers to collect a fee from the  
9 consumer at the time of sale or lease of a  
10 device; allowing consumers to bring a civil  
11 action for violation of the act; requiring  
12 recordkeeping and retention of records;  
13 providing for rulemaking; providing an  
14 appropriation;

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