

By the Committee on Agriculture and Consumer Services; and  
Senator Forman

303-2042A-99

1                                   A bill to be entitled  
2           An act relating to assistive technology;  
3           amending s. 427.802, F.S.; providing  
4           definitions; amending s. 427.803, F.S.;  
5           requiring the manufacturer to make repairs  
6           necessary to conform the device to the  
7           warranty; providing notice of the dealer's and  
8           manufacturer's address and telephone number;  
9           providing procedures for filing claims;  
10          amending s. 427.804, F.S.; allowing consumers  
11          to submit disputes to the Department of  
12          Agriculture and Consumer Services; authorizing  
13          the department to investigate complaints;  
14          creating s. 427.8041, F.S.; providing for  
15          registration of dealers, for fees, and for  
16          application procedures; providing grounds for  
17          refusal or denial of registration; requiring  
18          dealers to allow department personnel to enter  
19          their places of business; authorizing the  
20          department to impose penalties; authorizing the  
21          department or the state attorney to bring civil  
22          actions for violations of the act; providing  
23          for fees and fines collected to be deposited  
24          into the General Inspection Trust Fund;  
25          authorizing dealers to collect a fee from the  
26          consumer at the time of sale or lease of a  
27          device; allowing consumers to bring a civil  
28          action for violation of the act; requiring  
29          recordkeeping and retention of records;  
30          providing for rulemaking; providing an  
31          appropriation; providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 427.802, Florida Statutes, is  
4 amended to read:

5 427.802 Definitions.--As used in this part:

6 (1) "Assistive technology devices" means manual  
7 wheelchairs, motorized wheelchairs, motorized scooters,  
8 voice-synthesized computer modules, optical scanners, talking  
9 software, braille printers, environmental control devices for  
10 use by a person with quadriplegia, motor vehicle adaptive  
11 transportation aids, devices that enable persons with severe  
12 speech disabilities to in effect speak, personal transfer  
13 systems,and specialty beds, including a demonstrator, that a  
14 consumer purchases or accepts transfer of in this state for  
15 use by a person with a disability.

16 (2) "Assistive Technology Device Warranty Act rights  
17 period" means the period ending 1 year after first delivery of  
18 the assistive technology device to the consumer or the  
19 manufacturer's express written warranty, whichever is longer.

20 (3)~~(2)~~ "Person with a disability" means any person who  
21 has one or more permanent physical or mental limitations that  
22 restrict his or her ability to perform the normal activities  
23 of daily living and impede his or her capacity to live  
24 independently.

25 (4)~~(3)~~ "Assistive technology device dealer" means a  
26 business entity that is primarily engaged ~~person who is~~ in the  
27 ~~business of selling or leasing of~~ assistive technology  
28 devices. As used in this subsection, the term "primarily"  
29 means no less than 30 percent of the business entity's gross  
30 sales in the previous fiscal year.

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1           ~~(5)(4)~~ "Assistive technology device lessor" means a  
2 person who leases an assistive technology device to a  
3 consumer, or holds the lessor's rights, under a written lease.

4           ~~(6)(5)~~ "Collateral costs" means expenses incurred by a  
5 consumer in connection with the repair of a nonconformity,  
6 including the costs of obtaining an alternative assistive  
7 technology device.

8           ~~(7)(6)~~ "Consumer" means any of the following:

9           (a) The purchaser of an assistive technology device,  
10 if the assistive technology device was purchased from an  
11 assistive technology device dealer or manufacturer for  
12 purposes other than resale.

13           (b) A person to whom the assistive technology device  
14 is transferred for purposes other than resale, if the transfer  
15 occurs before the expiration of an express warranty applicable  
16 to the assistive technology device.

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

18           (d) A person who leases an assistive technology device  
19 from an assistive technology device lessor under a written  
20 lease.

21           ~~(8)(7)~~ "Demonstrator" means an assistive technology  
22 device used primarily for the purpose of demonstration to the  
23 public.

24           (9) "Department" means the Department of Agriculture  
25 and Consumer Services.

26           ~~(10)(8)~~ "Early termination cost" means any expense or  
27 obligation that an assistive technology device lessor incurs  
28 as a result of both the termination of a written lease before  
29 the termination date set forth in that lease and the return of  
30 an assistive technology device to a manufacturer pursuant to  
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1 | this section. The term includes a penalty for prepayment  
2 | under a financial arrangement.

3 |       (11)~~(9)~~ "Early termination saving" means any expense  
4 | or obligation that an assistive technology device lessor  
5 | avoids as a result of both the termination of a written lease  
6 | before the termination date set forth in the lease and the  
7 | return of an assistive technology device to a manufacturer  
8 | pursuant to this section. The term includes an interest  
9 | charge that the assistive technology device lessor would have  
10 | paid to finance the assistive technology device or, if the  
11 | assistive technology device lessor does not finance the  
12 | assistive technology device, the difference between the total  
13 | amount for which the lease obligates the consumer during the  
14 | period of the lease term remaining after the early termination  
15 | and the present value of that amount at the date of the early  
16 | termination.

17 |       (12)~~(10)~~ "Manufacturer" means a business entity that  
18 | manufactures or produces assistive technology devices for sale  
19 | and agents of that business entity, including an importer, a  
20 | distributor, a factory branch, a distributor branch, and any  
21 | warrantors of the manufacturer's assistive technology device,  
22 | ~~but not~~ including an assistive technology device dealer.

23 |       (13)~~(11)~~ "Nonconformity" means a condition or defect  
24 | of an assistive technology device which substantially impairs  
25 | the use, value, or safety of the device and which is covered  
26 | by an express warranty applicable to the assistive technology  
27 | device, but does not include a condition or defect that is the  
28 | result of abuse, neglect, or unauthorized modification or  
29 | alteration of the assistive technology device by a consumer.

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1            (14)~~(12)~~ "Reasonable attempt to repair" means, within  
2 the terms of an express warranty applicable to a new assistive  
3 technology device:

4            (a) A maximum of three efforts by the manufacturer,  
5 the assistive technology device lessor, or any of the  
6 manufacturer's authorized assistive technology device dealers  
7 to repair a nonconformity that is subject to repair under the  
8 warranty; or

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

12            Section 2. Section 427.803, Florida Statutes, is  
13 amended to read:

14            427.803 Duty of manufacturer and an assistive  
15 technology device dealer to conform an assistive technology  
16 device to the warranty ~~Express warranty.--~~

17            (1) A manufacturer who sells a new assistive  
18 technology device to a consumer, either directly or through an  
19 assistive technology device dealer, shall furnish the consumer  
20 with an express warranty for the assistive technology device.  
21 The duration of the express warranty must be at least 1 year  
22 after first delivery of the assistive technology device to the  
23 consumer. In the absence of an express warranty from the  
24 manufacturer, the manufacturer is considered to have expressly  
25 warranted to the consumer of an assistive technology device  
26 that, for a period of 1 year after the date of first delivery  
27 to the consumer, the assistive technology device will be free  
28 from any condition or defect that substantially impairs the  
29 value of the assistive technology device to the consumer.

30            (2) If an assistive technology device does not conform  
31 to the warranty and the consumer first reports the problem to

1 the manufacturer during the Assistive Technology Device  
2 Warranty Act rights period, the manufacturer shall make such  
3 repairs as are necessary to conform the device to the  
4 warranty, irrespective of whether such repairs are made after  
5 the expiration of the Assistive Technology Device Warranty Act  
6 rights period. Such repairs shall be at no cost to the  
7 consumer if reported to the manufacturer or assistive  
8 technology device dealer during the Assistive Technology  
9 Device Warranty Act rights period. Nothing in this paragraph  
10 shall be construed to grant an extension of the Assistive  
11 Technology Device Warranty Act rights period or to expand the  
12 time within which a consumer must file a complaint under this  
13 chapter.

14 (3) Each manufacturer or assistive technology device  
15 dealer shall provide to its consumers conspicuous notice of  
16 the address and phone number for its zone, district, or  
17 regional office for this state in the written warranty or  
18 owner's manual. Within 10 days after the department's written  
19 request, a manufacturer shall forward to the department a copy  
20 of the owner's manual and any written warranty for each make  
21 and model of assistive technology device that it sells in this  
22 state.

23 (4) The manufacturer shall provide to the assistive  
24 technology device dealer and, at the time of acquisition, the  
25 assistive technology device dealer shall provide to the  
26 consumer a written statement that explains the consumer's  
27 rights under this chapter. The written statement shall be  
28 prepared by the department and shall contain a toll-free  
29 number for the department that the consumer can contact to  
30 obtain information regarding the consumer's rights and  
31 obligations under this chapter or to commence arbitration. The

1 consumer's signed acknowledgment of receipt of materials  
2 required under this subsection shall constitute prima facie  
3 evidence of compliance by the manufacturer and assistive  
4 technology device dealer. The form of the acknowledgments  
5 shall be approved by the department, and the assistive  
6 technology device dealer shall maintain the consumer's signed  
7 acknowledgment for 3 years.

8 (5) A manufacturer or an assistive technology device  
9 dealer shall provide to the consumer, each time the consumer's  
10 assistive technology device is returned after being examined  
11 or repaired under the warranty, a fully itemized, legible  
12 statement of any diagnosis made and all work performed on the  
13 assistive technology device, including, but not limited to, a  
14 general description of the problem reported by the consumer or  
15 an identification of the defect or condition, parts and labor,  
16 the date on which the assistive technology device was  
17 submitted for examination or repair, and the date when the  
18 repair or examination was completed.

19 Section 3. Section 427.804, Florida Statutes, is  
20 amended to read:

21 427.804 Repair of nonconforming assistive technology  
22 devices; refund or replacement of devices after attempt to  
23 repair; sale or lease of returned device; arbitration;  
24 investigation; limitation of rights.--

25 (1) If a new assistive technology device does not  
26 conform to an applicable express warranty and the consumer  
27 reports the nonconformity to the manufacturer, the assistive  
28 technology device lessor, or any of the manufacturer's  
29 authorized assistive technology device dealers and makes the  
30 assistive technology device available for repair within 1 year  
31 after first delivery or return of the assistive technology

1 device to the consumer, the nonconformity must be repaired at  
2 no charge to the consumer.

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

7 (a) Accept return of the assistive technology device  
8 and replace the assistive technology device with a comparable  
9 new assistive technology device and refund any collateral  
10 costs.

11 (b) Accept return of the assistive technology device  
12 and refund to the consumer and to any holder of a perfected  
13 security interest in the consumer's assistive technology  
14 device, as the interest may appear, the full purchase price  
15 plus any finance charge amount paid by the consumer at the  
16 point of sale, and collateral costs.

17 (c) With respect to a consumer as defined in s.  
18 427.802(6)(d), accept return of the assistive technology  
19 device, refund to the assistive technology device lessor and  
20 to any holder of a perfected security interest in the  
21 assistive technology device, as the interest may appear, the  
22 current value of the written lease, and refund to the consumer  
23 the amount that the consumer paid under the written lease plus  
24 any collateral costs.

25 (3) The current value of the written lease equals the  
26 total amount for which the lease obligates the consumer during  
27 the period of the lease remaining after its early termination  
28 plus the assistive technology device dealer's early  
29 termination costs and the value of the assistive technology  
30 device at the lease expiration date if the lease sets forth  
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1 the value, less the assistive technology device lessor's early  
2 termination savings.

3 (4) To receive a comparable new assistive technology  
4 device or a refund due under paragraph (2)(a), a consumer must  
5 offer to the manufacturer of the assistive technology device  
6 having the nonconformity to transfer possession of the  
7 assistive technology device to the manufacturer. No later  
8 than 30 days after the offer, the manufacturer shall provide  
9 the consumer with the comparable assistive technology device  
10 or refund. When the manufacturer provides the comparable  
11 assistive technology device or refund, the consumer shall  
12 return the assistive technology device having the  
13 nonconformity to the manufacturer, along with any endorsements  
14 necessary to transfer real possession to the manufacturer.

15 (5) To receive a refund due under paragraph (2)(b), a  
16 consumer must offer to return the assistive technology device  
17 having the nonconformity to its manufacturer. No later than  
18 30 days after the offer, the manufacturer shall provide the  
19 refund to the consumer. When the manufacturer provides the  
20 refund, the consumer shall return to the manufacturer the  
21 assistive technology device having the nonconformity.

22 (6) To receive a refund due under paragraph (2)(c), an  
23 assistive technology device lessor must offer to transfer  
24 possession of the assistive technology device having the  
25 nonconformity to its manufacturer. No later than 30 days  
26 after the offer, the manufacturer shall provide the refund to  
27 the assistive technology device lessor. When the manufacturer  
28 provides the refund, the assistive technology device lessor  
29 shall provide to the manufacturer any endorsements necessary  
30 to transfer legal possession to the manufacturer.

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

4           (8) An assistive technology device that is returned by  
5 a consumer or assistive technology device lessor in this  
6 state, or by a consumer or assistive technology device lessor  
7 in another state under a similar law of that state, may not be  
8 sold or leased again in this state, unless full disclosure of  
9 the reasons for return is made to any prospective buyer or  
10 lessee.

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

15           (10) The department shall process consumer complaints  
16 pursuant to s. 570.544.

17           ~~(11)(9)~~ Each consumer may submit any dispute arising  
18 under this part to an alternative arbitration mechanism  
19 established pursuant to chapter 682. Upon notice by the  
20 consumer, all manufacturers must submit to such alternative  
21 arbitration.

22           ~~(12)(10)~~ Such alternative arbitration must be  
23 conducted by a professional arbitrator or arbitration firm  
24 appointed under chapter 682 and any applicable rules. These  
25 procedures must provide for the personal objectivity of the  
26 arbitrators and for the right of each party to present its  
27 case, to be in attendance during any presentation made by the  
28 other party, and to rebut or refute such a presentation.

29           ~~(13)(11)~~ This part does not limit rights or remedies  
30 available to a consumer under any other law.

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1           Section 4. Section 427.8041, Florida Statutes, is  
2 created to read:

3           427.8041 Assistive technology device dealers  
4 registration; application; exemption; penalties; adoption of  
5 fees and fines; purchase fees.--

6           (1) Each assistive technology device dealer must  
7 register with the department prior to doing business in this  
8 state. The application for registration must be on a form  
9 adopted by the department and must include at least the  
10 following information:

11           (a) The name of the applicant.

12           (b) The name under which the applicant is doing  
13 business.

14           (c) The business address at which the applicant sells  
15 assistive technology devices or in the case of a mobile  
16 assistive technology device business, the home address of the  
17 owner, if different from the business address.

18           (d) Copies of all licenses, permits, and  
19 certifications obtained by the applicant or employees of the  
20 applicant.

21           (2) Any assistive technology device dealer maintaining  
22 more than one place of business must register each separate  
23 location. In such case, fees shall be paid for each place of  
24 business.

25           (3) Each initial application and renewal application  
26 for registration must be accompanied by a registration fee of  
27 \$300.

28           (4) The department shall issue to each applicant a  
29 registration certificate. In the case of an applicant with  
30 more than one place of business, the department shall issue a  
31 registration certificate for each place of business. The

1 certificate must show at least the name and address of the  
2 assistive technology device dealer and the registration number  
3 for that place of business. In the case of a mobile assistive  
4 technology device dealer, the certificate must show the home  
5 address of the owner, if different from the business address.  
6 The registration certificate must be posted in a conspicuous  
7 manner in the assistive technology device dealer's place of  
8 business.

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

14 (6) Each registration must be renewed annually on or  
15 before the expiration date of the current registration. A late  
16 fee of \$25 shall be paid, in addition to the registration fee  
17 or any other penalty, for any registration renewal application  
18 that is received by the department after the expiration date  
19 of the current registration. The department may not issue the  
20 registration until all fees are paid.

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

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

27 (b) Have not satisfied a civil fine, administrative  
28 fine, or other penalty arising out of any administrative or  
29 enforcement action brought by any governmental agency based  
30 upon conduct involving fraud, dishonest dealing, or any  
31 violation of this part;

1           (c) Have had against them any civil, criminal, or  
2 administrative adjudication in any jurisdiction, based upon  
3 conduct involving fraud, dishonest dealing, or any violation  
4 of this part; or

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

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

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

16           (a) Violated or is operating in violation of any of  
17 the provisions of this part or of the rules adopted or orders  
18 issued thereunder;

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

22           (c) Refused or failed, or any of its principal  
23 officers have refused or failed, after notice, to produce any  
24 document or record or disclose any information required to be  
25 produced or disclosed under this part or the rules of the  
26 department;

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

30           (e) Has intentionally defrauded the public through  
31 dishonest or deceptive means.

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

4           (a) Issuing a notice of noncompliance pursuant to s.  
5 120.695.

6           (b) Imposing an administrative fine not to exceed  
7 \$5,000 per violation for each act which constitutes a  
8 violation of this part or a rule or order.

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

11           (d) Refusing to register or revoking or suspending a  
12 registration.

13           (e) Placing the registrant on probation for a period  
14 of time, subject to such conditions as the department may  
15 specify.

16           (11) The administrative proceedings which could result  
17 in the entry of an order imposing any of the penalties  
18 specified in subsection (10) shall be conducted in accordance  
19 with chapter 120.

20           (12) The department or the state attorney, if a  
21 violation of this part occurs in his or her judicial circuit,  
22 shall be the enforcing authority for purposes of this part and  
23 may bring a civil action in circuit court for temporary or  
24 permanent injunctive relief and may seek other appropriate  
25 civil relief, including a civil penalty not to exceed \$5,000  
26 for each violation, restitution and damages for injured  
27 customers, court costs, and reasonable attorney's fees.

28           (13) The enforcing authority may terminate any  
29 investigation or action upon agreement by the offender to pay  
30 a stipulated civil penalty, to make restitution or pay damages  
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1 to customers, or to satisfy any other relief authorized herein  
2 and requested by the department.

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

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

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

20 (17) In fiscal year 1999-2000, the Department of  
21 Agriculture and Consumer Services may use 5 percent of the  
22 fees collected and remitted in that fiscal year by the  
23 assistive technology device dealers or lessors under  
24 subsection (16) and, during each fiscal year thereafter, may  
25 use between 5 percent and 10 percent of such fees collected in  
26 that fiscal year, towards the development of an Assistive  
27 Technology Device Warranty Act Education Program or to  
28 purchase expert consultation services from an entity having  
29 the mission of promoting access to, awareness of, and advocacy  
30 for assistive technology devices and services to:

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1           (a) Assist investigators to effectively carry out s.  
2 427.806.

3           (b) Conduct sensitivity training for the department's  
4 staff as it relates to assistive technology to ensure  
5 effective recording of complaints relating to assistive  
6 technology.

7           (c) Assist in the design and strategy of a consumer  
8 education program to educate consumers of assistive technology  
9 devices and assistive technology device dealers on this act as  
10 amended.

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

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

22           (20) The department may, at any time during business  
23 hours, enter any business location of an assistive technology  
24 device dealer that is required to be registered under this act  
25 and examine the books and records of the assistive technology  
26 device dealer.

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

29           Section 5. There is appropriated from the General  
30 Inspection Trust Fund of the Department of Agriculture and  
31 Consumer Services for Fiscal Year 1999-2000 the sum of



1 \$450,000 for six full-time equivalent positions to administer  
2 this act.

3 Section 6. This act shall take effect July 1, 1999.  
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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
6 COMMITTEE SUBSTITUTE FOR  
7 Senate Bill 2292

8 Committee Substitute for Senate Bill 2292 is different from  
9 Senate Bill 2292 in that it:

- 10 - Replaces "adaptive augmentative communication" with  
11 devices that enable individuals with severe speech  
12 impairment to in effect speak.
- 13 - Clarifies the definition of an assistive technology  
14 device dealer.
- 15 - Deletes "as determined by the consumer" language from  
16 the act.
- 17 - Requires a manufacturer to forward a copy of the owner's  
18 manual and warranty information only within ten days of  
19 a request made by the department rather than by January  
20 1 of each year.
- 21 - Increases the registration fee from \$125 to \$300 to make  
22 the program self sufficient.
- 23 - Provides guidelines to the department for the spending  
24 of the moneys to increase consumer awareness.
- 25 - Provides the department with rule-making authority.
- 26 - Appropriates \$450,000 from the General Inspection Trust  
27 Fund of the department to provide for six FTE positions  
28 to administer this act.
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