

By Representative Crow

1 A bill to be entitled
 2 An act relating to controlled substances;
 3 providing for specified licensing boards to
 4 adopt rules governing the prescribing of
 5 controlled substances; requiring certain health
 6 care providers to complete education courses
 7 relating to the prescription of controlled
 8 substances; providing penalties and requiring a
 9 report; providing for the emergency suspension
 10 of certain licenses for prescribing violations;
 11 requiring the Department of Health and the
 12 Department of Law Enforcement to share certain
 13 information regarding health care
 14 practitioners; requiring a report; requiring
 15 the Department of Legal Affairs to establish an
 16 electronic system to monitor the prescribing of
 17 certain controlled substances; establishing an
 18 advisory council and providing for its
 19 membership, duties, staff, and compensation;
 20 amending s. 456.033, F.S.; eliminating certain
 21 requirements for HIV and AIDS education
 22 courses; amending s. 456.072, F.S.; requiring a
 23 fine for certain violations involving excessive
 24 prescribing of controlled substances; amending
 25 s. 458.345, F.S.; requiring certain resident
 26 physicians, interns, and fellows to complete an
 27 educational course in prescribing controlled
 28 substances; amending s. 461.013, F.S.;
 29 prohibiting the presigning of blank
 30 prescription forms and providing penalties;
 31 amending s. 893.04, F.S.; providing additional

1 requirements for pharmacists regarding the
2 identification of persons to whom controlled
3 substances are dispensed; prohibiting certain
4 prescribing practitioners from possessing,
5 administering, dispensing, or prescribing
6 controlled substances; creating s. 893.065,
7 F.S.; establishing protocols requiring
8 prescriptions for certain controlled substances
9 to be issued on special forms developed by the
10 Department of Legal Affairs; establishing
11 requirements for the design, issuance, and
12 control of such forms; providing record-keeping
13 requirements; providing other requirements for
14 the use of such forms; creating s. 893.0655,
15 F.S.; requiring certain practitioners to
16 surrender such prescription forms; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Physicians; rules establishing prescribing
22 guidelines.--To minimize the diversion and resultant abuse of
23 controlled substances, the Board of Medicine and the Board of
24 Osteopathic Medicine shall adopt rules to establish guidelines
25 for prescribing controlled substances to patients in emergency
26 department settings. Such guidelines must allow physicians to
27 provide legitimate medical treatment of acute and chronic pain
28 and require them to recognize and prevent abuse of pain
29 medications prescribed in emergency department settings. Each
30 board shall consult with the Florida College of Emergency
31 Physicians in developing these guidelines.

1 Section 2. Instruction required for certain licensees
2 in prescribing and pharmacology.--

3 (1) The appropriate professional licensing board shall
4 require each person licensed under chapter 458, chapter 459,
5 chapter 461, chapter 462, or chapter 466, Florida Statutes, to
6 complete a continuing educational course, approved by the
7 board, on appropriate prescribing and pharmacology of
8 controlled substances, as part of the licensee's initial
9 license renewal after January 1, 2003. The course shall
10 provide education in the state and federal laws and rules
11 governing the prescribing and dispensing of controlled
12 substances; in appropriate evaluation of patients for any risk
13 of drug diversion and the resulting abuse of controlled
14 substances; in the use of informed consent and other
15 protocols, such as discussing the risks and benefits of using
16 controlled substances with patients to prevent drug diversion;
17 in the need to keep accurate and complete medical records to
18 justify treatment with controlled substances; in addiction and
19 substance abuse issues with respect to patients; in the
20 appropriate use of recognized pain-management guidelines; and
21 in the need for consultation and referral of patients who are
22 at risk for misuse of medication or diversion of controlled
23 substances, when appropriate.

24 (2) Such licensees must submit confirmation of
25 completion of such a course, on a form provided by the board,
26 when submitting fees for the initial biennial license renewal
27 after January 1, 2003.

28 (3) The board may approve additional equivalent
29 courses that satisfy the requirements of subsection (1). Each
30 licensing board that requires a licensee to complete an
31 educational course pursuant to this section may include the

1 hours required to complete the course in the total required
2 continuing educational requirements.

3 (4) Any person who holds two or more licenses subject
4 to this section may satisfy the requirements of this section
5 by taking only one such board-approved course for relicensure
6 of all such licenses.

7 (5) A licensee who fails to comply with this section
8 is subject to disciplinary action under each respective
9 practice act and s. 456.072(1)(k), Florida Statutes. In
10 addition to discipline by the board, the licensee must
11 complete the course.

12 (6) The board shall require, as a condition of
13 granting a license under the chapter specified in subsection
14 (1), that an applicant for initial licensure complete an
15 educational course in the appropriate prescribing and
16 pharmacology of controlled substances. An applicant who has
17 not taken a course at the time of licensure shall, upon
18 submitting an affidavit showing good cause, be allowed 6
19 months within which to complete this requirement.

20 (7) The board may adopt rules necessary to administer
21 this section.

22 (8) Each board shall report to the President of the
23 Senate, the Speaker of the House of Representatives, and the
24 chairpersons of the appropriate substantive committees of the
25 Legislature by March 1 of each year on the implementation of
26 and compliance with this section.

27 Section 3. Emergency suspension orders; controlled
28 substances.--Upon receipt of sufficient evidence from any
29 agency authorized to enforce chapter 893, Florida Statutes,
30 regarding a violation of ss. 458.331(1)(q), 458.331(1)(r),
31 458.331(1)(aa), 459.015(1)(t), 459.015(1)(u), 459.015(1)(ee),

1 461.013(1)(o), 461.013(1)(p), 461.013(1)(dd), 462.14(1)(q),
2 462.14(1)(r), 462.14(1)(aa), 464.018(1)(i), 465.016(1)(e),
3 465.016(1)(i), 466.028(1)(p), 466.028(1)(q), 466.028(1)(r), or
4 466.028(1)(dd) or chapter 893, Florida Statutes, by a licensed
5 health care practitioner who is authorized to prescribe,
6 dispense, or administer controlled substances, the Department
7 of Health shall recommend the suspension or restriction of the
8 practitioner's license to the Secretary of Health within 10
9 working days after receiving such evidence. The Secretary of
10 Health may suspend or restrict the license of the practitioner
11 in accordance with s. 120.60(6), Florida Statutes.

12 Section 4. Sharing of arrest and other information
13 regarding certain health care practitioners.--

14 (1) The Department of Health shall electronically
15 submit to the Department of Law Enforcement a list of health
16 care practitioners licensed in this state who are authorized
17 to prescribe, dispense, or administer controlled substances.
18 In order to facilitate the efficiency of the Department of
19 Health's investigation of applicable violations involving the
20 diversion of controlled substances by such practitioners, the
21 Department of Law Enforcement shall, when practicable, notify
22 and provide investigative information to the Department of
23 Health regarding the arrest of any such practitioner.

24 (2) The Medical Examiner's Commission within the
25 Department of Law Enforcement shall report quarterly to the
26 Department of Health any deaths attributed to the abuse of
27 controlled substances, based on autopsy reports completed
28 within this state, and any other public information that may
29 facilitate that department's expeditious investigation of the
30 information to determine whether any of the deaths have
31 involved conduct by a licensed health care practitioner which

1 is subject to disciplinary action under s. 456.073, Florida
2 Statutes. The Department of Health or the board having
3 regulatory authority over the practitioner shall investigate
4 any information received by the department or the board when
5 it has reasonable grounds to believe that the practitioner has
6 violated any law relating to the practitioner's practice.

7 (3) To help the Department of Health and regulatory
8 boards control the diversion and resultant abuse of controlled
9 substances, the Department of Health and the Department of Law
10 Enforcement shall study the feasibility of expanding the
11 electronic exchange of information to facilitate the transfer
12 to the Department of Health of criminal history information
13 involving licensed health care practitioners who are
14 authorized to prescribe, administer, or dispense controlled
15 substances. The Department of Law Enforcement shall
16 investigate the feasibility of the electronic transmission of
17 information from medical examiners within this state to the
18 Department of Health regarding autopsies and other public
19 reports that attribute death to controlled substance abuse.
20 The Department of Law Enforcement, in consultation with the
21 Department of Health, must submit a report of its findings to
22 the Legislature by November 1, 2002.

23 Section 5. Electronic monitoring system for
24 prescriptions.--

25 (1) By July 1, 2003, the Department of Legal Affairs
26 shall design and establish an electronic system to monitor the
27 prescribing of Schedule II and Schedule III controlled
28 substances by health care practitioners within the state or
29 the dispensing of such controlled substances to an address
30 within the state by a pharmacy permitted or registered by the
31 Board of Pharmacy.

1 (2) The Attorney General may, by rule, designate any
2 opiate listed as a Schedule IV controlled substance for
3 inclusion in such system.

4 (3) Each pharmacist or other person authorized by law
5 to dispense controlled substances within this state must
6 timely report to the Department of Legal Affairs the data
7 required by this section each time that:

8 (a) A Schedule II controlled substance is dispensed;

9 (b) A Schedule III controlled substance is dispensed;

10 or

11 (c) An opiate is dispensed which is listed in Schedule
12 IV as a controlled substance and is designated by the Attorney
13 General.

14 (4) The data required under this section includes:

15 (a) The patient's name.

16 (b) The patient's address.

17 (c) The national drug code number of the substance
18 dispensed.

19 (d) The date that the substance is dispensed.

20 (e) The quantity of substance dispensed.

21 (f) The dispenser's United States Drug Enforcement
22 Administration Number.

23 (g) The prescribing practitioner's United States Drug
24 Enforcement Administration Number.

25 (5) The information must be reported within 15 days
26 after the date the controlled substance is dispensed.

27 (6) A dispenser must transmit the information required
28 by this section in an electronic format specified by the
29 Department of Legal Affairs unless a specific waiver is
30 granted by the department to that dispenser.

31

1 (7) The Department of Legal Affairs shall establish a
2 seven-member prescription monitoring program advisory council
3 to assist it in implementing the system.

4 (a) The Governor shall appoint members to serve on the
5 advisory council. The members of the council shall include the
6 Attorney General or his or her designee, the Secretary of
7 Health or his or her designee, the executive director of the
8 Department of Law Enforcement or his or her designee, the
9 director of the Office of Drug Control within the Executive
10 Office of Governor or his or her designee, a health care
11 practitioner who is licensed in this state and authorized to
12 prescribe controlled substances, a pharmacist who is licensed
13 in this state, and a prosecutor who has expertise in the
14 criminal prosecution of drug-diversion cases.

15 (b) The advisory council members shall serve without
16 compensation but may receive reimbursement, as provided in s.
17 112.061, Florida Statutes, for per diem and travel expenses
18 incurred in the performance of their official duties.

19 (c) The Department of Legal Affairs shall provide
20 staff and other administrative assistance that is reasonably
21 necessary to assist the advisory council in carrying out its
22 responsibilities. The advisory council is abolished July 1,
23 2003.

24 (8) The Department of Legal Affairs shall adopt rules
25 pursuant to ss. 120.536(1) and 120.574, Florida Statutes,
26 necessary to administer this section.

27 Section 6. Subsections (1) and (9) of section 456.033,
28 Florida Statutes, are amended to read:

29 456.033 Requirement for instruction for certain
30 licensees on HIV and AIDS.--

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1 (1) The appropriate board shall require each person
2 licensed or certified under chapter 457; ~~chapter 458; chapter~~
3 ~~459; chapter 460; chapter 461; chapter 463; part I of chapter~~
4 464; chapter 465; ~~chapter 466;~~part II, part III, part V, or
5 part X of chapter 468; or chapter 486 to complete a continuing
6 educational course, approved by the board, on human
7 immunodeficiency virus and acquired immune deficiency syndrome
8 as part of biennial relicensure or recertification. The course
9 shall consist of education on the modes of transmission,
10 infection control procedures, clinical management, and
11 prevention of human immunodeficiency virus and acquired immune
12 deficiency syndrome. Such course shall include information on
13 current Florida law on acquired immune deficiency syndrome and
14 its impact on testing, confidentiality of test results,
15 treatment of patients, and any protocols and procedures
16 applicable to human immunodeficiency virus counseling and
17 testing, reporting, the offering of HIV testing to pregnant
18 women, and partner notification issues pursuant to ss. 381.004
19 and 384.25.

20 (9)~~(a)~~ In lieu of completing a course as required in
21 subsection (1), the licensee may complete a course in
22 end-of-life care and palliative health care, so long as the
23 licensee completed an approved AIDS/HIV course in the
24 immediately preceding biennium.

25 ~~(b) In lieu of completing a course as required by~~
26 ~~subsection (1), a person licensed under chapter 466 who has~~
27 ~~completed an approved AIDS/HIV course in the immediately~~
28 ~~preceding 2 years may complete a course approved by the Board~~
29 ~~of Dentistry.~~

30 Section 7. Paragraph (d) of subsection (2) of section
31 456.072, Florida Statutes, is amended to read:

1 456.072 Grounds for discipline; penalties;
2 enforcement.--

3 (2) When the board, or the department when there is no
4 board, finds any person guilty of the grounds set forth in
5 subsection (1) or of any grounds set forth in the applicable
6 practice act, including conduct constituting a substantial
7 violation of subsection (1) or a violation of the applicable
8 practice act which occurred prior to obtaining a license, it
9 may enter an order imposing one or more of the following
10 penalties:

11 (d) Imposition of an administrative fine not to exceed
12 ~~\$25,000~~~~\$10,000~~ for each count or separate offense. If the
13 violation is for fraud or making a false or fraudulent
14 representation, the board, or the department if there is no
15 board, must impose a fine of \$10,000 per count or offense. If
16 the violation is for inappropriate or excessive prescribing of
17 any controlled substance, the board, or the department if
18 there is no board, must impose a fine of \$25,000 per count or
19 offense.

20 Section 8. Paragraph (d) is added to subsection (1) of
21 section 458.345, Florida Statutes, to read:

22 458.345 Registration of resident physicians, interns,
23 and fellows; list of hospital employees; prescribing of
24 medicinal drugs; penalty.--

25 (1) Any person desiring to practice as a resident
26 physician, assistant resident physician, house physician,
27 intern, or fellow in fellowship training which leads to
28 subspecialty board certification in this state, or any person
29 desiring to practice as a resident physician, assistant
30 resident physician, house physician, intern, or fellow in
31 fellowship training in a teaching hospital in this state as

1 defined in s. 408.07(44) or s. 395.805(2), who does not hold a
2 valid, active license issued under this chapter shall apply to
3 the department to be registered and shall remit a fee not to
4 exceed \$300 as set by the board. The department shall
5 register any applicant the board certifies has met the
6 following requirements:

7 (d) Has completed, upon initial registration, a 2-hour
8 educational course in the prescribing of controlled
9 substances. The course shall consist of education in state and
10 federal laws and rules governing the prescribing and
11 dispensing of controlled substances; in appropriate evaluation
12 of patients for any risk of drug diversion and the resulting
13 abuse of controlled substances; in the use of informed consent
14 and other protocols, such as a discussion of the risks and
15 benefits of the use of controlled substances with patients to
16 prevent drug diversion; in the need to keep accurate and
17 complete medical records to justify treatment with controlled
18 substances; in addiction and substance abuse issues with
19 respect to patients; in the appropriate use of recognized
20 pain-management guidelines; and in the need for consultation
21 and referral of patients who are at risk for misuse of their
22 medication or diversion of controlled substances, when
23 appropriate. An applicant who has not taken a course at the
24 time of registration shall, upon submitting an affidavit
25 showing good cause, be allowed 6 months within which to
26 complete this requirement.

27 Section 9. Paragraph (dd) is added to subsection (1)
28 of section 461.013, Florida Statutes, to read:

29 461.013 Grounds for disciplinary action; action by the
30 board; investigations by department.--

31

1 (1) The following acts constitute grounds for denial
2 of a license or disciplinary action, as specified in s.
3 456.072(2):

4 (dd) Presigning blank prescription forms.

5 Section 10. Paragraph (h) is added to subsection (1)
6 of section 893.04, Florida Statutes, and subsection (4) is
7 added to said section, to read:

8 893.04 Pharmacist and practitioner.--

9 (1) A pharmacist, in good faith and in the course of
10 professional practice only, may dispense controlled substances
11 upon a written or oral prescription of a practitioner, under
12 the following conditions:

13 (h) A pharmacist may not dispense a controlled
14 substance to any individual not known to the pharmacist
15 without first obtaining proper identification and documenting,
16 by signature on a log book kept by the pharmacist, the
17 identity of the individual obtaining the controlled substance.
18 If the individual does not have proper identification, the
19 pharmacist must verify the validity of the prescription and
20 identity of the patient with the prescribing practitioner, or
21 the prescribing practitioner's authorized agent, before
22 dispensing the controlled substance. For purposes of this
23 section, identification is proper only if it contains the
24 photograph, the printed name, and the signature of the
25 individual obtaining the controlled substance.

26 (4) Any prescribing practitioner who surrenders, by
27 court order, or order of any state or governmental agency, or
28 voluntarily, his or her controlled substance privileges may
29 not possess, administer, dispense, or prescribe a controlled
30 substance unless those privileges have been restored and the

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1 practitioner has obtained current registration from the
2 appropriate federal agency as provided by law.

3 Section 11. Section 893.065, Florida Statutes, is
4 created to read:

5 893.065 Triplicate prescriptions required for certain
6 controlled substances.--

7 (1) On or after July 1, 2002, a person may not issue a
8 prescription for a Schedule II or Schedule III controlled
9 substance, or an opiate listed in Schedule IV which has been
10 designated by the Attorney General by rule, unless the
11 prescription meets the requirements of this section.

12 (2) The Department of Legal Affairs shall develop a
13 counterfeit-proof prescription blank for use by practitioners
14 who prescribe controlled substances classified in:

15 (a) Schedule II;

16 (b) Schedule III; or

17 (c) Schedule IV, as an opiate that is designated by
18 the Attorney General by rule.

19 (3) Prescription blanks shall be issued by the
20 Department of Legal Affairs to such practitioners in serially
21 numbered groups of not more than 100 forms each in triplicate,
22 unless a practitioner orally, electronically, or in writing
23 requests a larger quantity. The prescription blanks must be
24 printed on distinctive paper; must contain the serial number
25 of the group; must be sequentially numbered; and must bear the
26 preprinted full name, address, and category of professional
27 licensure of the practitioner to whom they are issued and that
28 practitioner's federal registry number for controlled
29 substances. The prescription blanks may not be transferred.

30 (4) The Department of Legal Affairs may charge a fee
31 for the prescription blanks in an amount sufficient to

1 reimburse the department for its actual costs of preparing,
2 issuing, and tracking such forms.

3 (5) Notwithstanding s. 893.04(1)(a)-(d), a person may
4 not prescribe a Schedule II or Schedule III controlled
5 substance, or an opiate listed in Schedule IV which has been
6 designated by the Attorney General by rule, nor may any person
7 fill, compound, or dispense such a prescription, unless it
8 complies with this section.

9 (a) The signature on each such prescription form must
10 be wholly written in ink or indelible pencil in the
11 handwriting of the prescribing practitioner. Each prescription
12 must be prepared in triplicate, dated, and signed by the
13 prescribing practitioner on the day when issued, and must
14 contain, typewritten or handwritten by the physician or an
15 employee of the physician, the full name and address of the
16 person for whom, or the owner of the animal for which, the
17 controlled substance is prescribed; the name, quantity, and
18 strength of the controlled substance; directions for use; and
19 the address, category of professional licensure, and federal
20 controlled substance registration number of the prescribing
21 practitioner. If the prescription is for an animal, the
22 prescription must state the species of animal for which it is
23 prescribed. If the prescribing practitioner does not specify
24 the address of the person for whom, or animal for which, the
25 prescription is prescribed, the pharmacist filling the
26 prescription or an employee acting under the direction of the
27 pharmacist must write or type the address on the prescription
28 or maintain the information in a readily retrievable form in
29 the pharmacy.

30 (b) The original and duplicate of the prescription
31 must be delivered to the pharmacist filling the prescription.

1 The duplicate must be retained on file by the proprietor of
2 the pharmacy in which it is filled for a period of 2 years,
3 and the original, properly endorsed by the pharmacist with the
4 name and address of the pharmacy, the pharmacy's state permit
5 number, the date that the prescription was filled, and the
6 signature of the pharmacist, must be transmitted to the
7 Department of Legal Affairs at the end of the month in which
8 the prescription was filled. Notwithstanding any provision of
9 this section, the prescribing practitioner's address, category
10 of professional licensure, or federal controlled substances
11 registration number need not appear on the prescription if
12 that information is readily retrievable in the pharmacy.

13 (c) All prescriptions issued for a Schedule II or
14 Schedule III controlled substance, or an opiate listed in
15 Schedule IV which has been designated by the Attorney General
16 by rule, must include both a written and numerical notation of
17 quantity on the face of the prescription.

18 (d) A pharmacist may not dispense more than a 30-day
19 supply of a controlled substance listed in Schedule III upon
20 an oral prescription.

21 (e) A pharmacist may not knowingly fill a prescription
22 that has been mutilated or forged for a Schedule II or
23 Schedule III controlled substance, or an opiate listed as a
24 Schedule IV controlled substance which has been designated by
25 the Attorney General by rule.

26 (f) Any controlled substance listed in Schedule III,
27 or any controlled substance that is an opiate listed as a
28 controlled substance in Schedule IV and which has been
29 designated by the Attorney General by rule, may be dispensed
30 by a pharmacist upon an oral prescription if, before filling
31 the prescription, the pharmacist reduces it to writing in ink

1 or indelible pencil in the handwriting of the pharmacist, upon
2 an official form issued by the Department of Legal Affairs for
3 that purpose. Such prescriptions must be prepared in
4 triplicate and must contain the date of the oral authorization
5 and the information required by paragraph (a).

6 Section 12. Section 893.0655, Florida Statutes, is
7 created to read:

8 893.0655 Surrender of prescription blanks.--

9 (1) When a practitioner who is named in a warrant of
10 arrest for, or is charged in an accusatory pleading with, a
11 felony violation of chapter 499 or chapter 893, the court in
12 which the pleading is filed or the magistrate who issued the
13 warrant shall, upon the motion of a law enforcement agency,
14 supported by probable cause, issue an order requiring the
15 practitioner to surrender to the clerk of the court all
16 triplicate prescription blanks in the practitioner's
17 possession at a specified time and shall direct the Department
18 of Health to withhold prescription blanks from the
19 practitioner. The law enforcement agency obtaining the order
20 shall notify the Department of Health of this order. Except as
21 provided in subsection (2), the order shall remain in effect
22 until further order of the court. Any practitioner possessing
23 prescription blanks in violation of the order commits a
24 misdemeanor of the first degree, punishable as provided in s.
25 775.082, s. 775.083, or s. 775.084.

26 (2) Such order shall be vacated if the court or
27 magistrate finds that the underlying violation is not
28 supported by reasonable cause, at a hearing held within 2
29 court days after the practitioner files and personally serves
30 upon the prosecuting attorney and the law enforcement agency
31 that obtained the order a notice of motion to vacate the

1 order, with any affidavits on which the practitioner relies.
2 At the hearing, the burden of proof, by a preponderance of the
3 evidence, is on the prosecution. Evidence presented at the
4 hearing shall be limited to the warrant of arrest with
5 supporting affidavits, the motion to require the defendant to
6 surrender all triplicate prescription blanks with supporting
7 affidavits, the sworn complaint and any documents or reports
8 incorporated by reference thereto, which, if based on
9 information and belief, state the basis for the information,
10 or any other documents of similar reliability, as well as
11 affidavits submitted by the prosecution and defense. Granting
12 of the motion to vacate the order is no bar to prosecution of
13 the alleged violation.

14 Section 13. This act shall take effect July 1, 2002.

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17 LEGISLATIVE SUMMARY

18

19 Provides for the regulation of the prescribing of
20 controlled substances. Requires education and continuing
21 education in the prescribing of controlled substances by
22 specified practitioners. Establishes penalties. Requires
23 certain state agencies to share information. Requires the
24 creation of an electronic monitoring system. Creates an
25 advisory council. Prohibits presigning prescriptions.
26 Requires state issuance and regulation of prescription
27 forms for controlled substances. Prohibits certain
28 practitioners from prescribing. Establishes
29 record-keeping requirements. Requires certain
30 practitioners to surrender their prescription forms. (See
31 bill for details.)

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