

HB

3

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 11, 1999

FURTHER REFERRALS:

Date of Committee Action: 3/31/99

The FINANCE Committee considered:

HB 3

HOUSE BILL NO. 3

DRUGS: POSSESSION OF LISTED CHEMICALS

"An Act relating to controlled substances and to the possession and distribution of certain chemicals."

recommends it be replaced with the following committee substitute CS HB 3 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) DOA fiscal note(s) _____

zero fiscal note(s) DPS, LAW zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Therriault</i> Therriault	X			
<i>Gene Bunde</i> Bunde	X			
<i>Vic Kohring</i> Kohring	X			
<i>Ben Grussendorf</i> Grussendorf	X			
<i>Tom Davis</i> Davis	X			
<i>J. Davies</i> J. Davies	X			
<i>Foster</i> Foster	X			
<i>Mulder</i> Mulder	X			

CHAIR'S SIGNATURE

Gene Therriault *Gene Bunde*

CO -

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 3 (JUD)

Revision Date: _____
 Title: "An Act relating to controlled substances and to the possession of certain chemicals"
 Sponsor: Representative Brice
 Requestor: (H) FIN

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURE	**	**	**	**	**	**
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CHANGE IN REVENUES ()	**	**	**	**	**	**
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 CF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Robert Poe, Jr.
 Agency: Department of Administration

Date: 4/2/99

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 3(JUD)

1999 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill increases the level of offense for manufacturing methamphetamine. Under current law it is a class B felony. (Methamphetamine is classified as a "Schedule IIA" controlled substance. Manufacture or delivery of Schedule IIA substances has traditionally been a class B felony.) Under Section 1 of the bill, manufacturing methamphetamine would be a class A felony.

The bill also makes it a class A felony offense to manufacture or possess with intent to manufacture "immediate precursors" of methamphetamine. Finally, Section 1 makes it a class A felony to possess "listed chemicals" that can be used in manufacturing methamphetamine. Possession of "precursor chemicals" is already a violation of federal statutes. See 21 U.S.C. § 841(d). This bill would, for the first time, make possession of such chemicals illegal under state law. The "listed chemicals" are not controlled substances. Many of them, such as acetone or iodine, are common and often used for legal purposes. The state would have to prove that the possession was with intent to manufacture methamphetamine.

The Public Defender Agency (PDA) does not have information on how many new prosecutions would result if this law is passed or how many cases PDA would be appointed to. However, PDA has to assume that there would be additional cases if this bill is passed and the law is enforced by police and prosecutors. Therefore, an indeterminate fiscal note is being submitted.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 3 (JUD)

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to controlled substances and to the possession of certain chemicals."	BRU	Criminal Division
Sponsor Representative Brice	Component	1st-4th Jud Dist, Crim Apps/Spec Lit
Requester House Judiciary Committee	Component Serial No.	2198-99/2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 3 (JUD) provides that it is a class A felony to manufacture methamphetamine, or to possess precursors or certain chemicals with the intent to manufacture methamphetamine. Manufacture of methamphetamine is extremely dangerous, not only to those working in the laboratories, but to those in the surrounding areas.

Passage of this bill is not anticipated to have a fiscal impact on the Department of Law. The department already has the ability to prosecute most instances of manufacture of a controlled substance under existing law.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Boldt *Bruce M. Boldt* Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 3/11/99, 10:33 AM
 Date 3/11/99

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1999

SUBJECT: Sectional Summary of CSHB 3(JUD). (Work Order No. 21-LS00401)

TO: Representative Tom Brice
Attn: Bonnie Carroll

FROM: Gerald P. Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 11.71.020(a) by providing that a person that (1) manufactures methamphetamine or an immediate precursor of methamphetamine, (2) possesses an immediate precursor of methamphetamine with the intent to manufacture methamphetamine, or (3) possesses a listed chemical with the intent to manufacture methamphetamine or an immediate precursor of methamphetamine, commits misconduct involving a controlled substance in the second degree, a class A felony.

Section 2. Provides a cross reference to a definition.

Section 3. Amends AS 11.71.030(a)(1) to clarify that this provision only applies to conduct that is not proscribed under AS 11.71.020(a), amended in sec. 1 of the bill.

Section 4. Amends AS 11.71.195 to provide that the exemption for certain substances provided by this statute only applies if the conduct in regard to the substances is not otherwise made illegal under our controlled substance laws.

Section 5. Defines what listed chemicals are and identifies listed chemicals.

GPL:glc
99-100.glc



Representative Tom Brice

ALASKA STATE LEGISLATURE

110 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement

CS for HB 3, Drugs: Possession of Precursor Chemicals

Methamphetamine is an addictive stimulant that dramatically affects the central nervous system. Methamphetamine is commonly known as "crank," "speed," and "ice." The drug is easily made in laboratories with relatively inexpensive, over-the-counter ingredients. Meth labs are extremely dangerous, even if they are not producing as the combinations of the chemicals that are used in the production process are highly explosive. These factors make methamphetamine a dangerous drug with great potential for widespread abuse.

The CS for HB 3 will address the problem of increasing production and use of methamphetamines in Alaska, and the danger posed by these illicit laboratories. This is accomplished by raising the penalties for the manufacture of methamphetamines and their immediate precursors, and the possession of listed chemicals with the intent to manufacture these drugs. Under the CS, the manufacture of methamphetamines and their immediate precursors will be a class A felony, punishable as provided in AS 12.55.125. Since this offense will be a class A felony, someone causing the death of a person while committing this crime will be subject to prosecuting for felony murder under AS 11.41.110. An attempt to manufacture methamphetamine or its immediate precursors will be punishable as a class B felony under as 11.31.100.

The CS also identifies chemicals that are legal to possess but are used for the manufacture of controlled substances. Possession of these chemicals with the intent to manufacture methamphetamines or their immediate precursors is made a class A felony. Since the manufacture of methamphetamines or their immediate precursors is being elevated to a class A felony, it automatically becomes a ground for eviction by a land lord under the definition of illegal activity involving a controlled substance under AS 34.03.360.

Methamphetamine labs are very dangerous, even if they are not producing drugs. By increasing the penalties for methamphetamine offenses, the CS for HB 3 will discourage people from producing methamphetamine thereby protecting the lives and property of people who may be living in an area where methamphetamine is being produced.



STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Representative Brice
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Representative Brice,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 3.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau

State President

Alaska Peace Officers Association

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

February 16, 1999

Honorable Representative Tom Brice
State Capitol
Juneau, AK 99801-1182

Re: House Bill 3

Dear Representative Brice:

Thank you for sponsoring House Bill 3. This legislation establishes a felony crime for those who possess certain chemicals with the intent to manufacture schedule IA, IIA, IIIA, IVA or VA drugs.

The Public Safety Employees Association fully supports this bill and advocates its quick passage so that Alaska's law enforcement officers can charge people who are using these dangerous chemicals to make methamphetamine and or other illegal drugs.

This important tool will allow officers to apprehend and deter methamphetamine traffickers and ensure our neighborhoods are safer places to live.

Please call us if you need any assistance in passing this bill. We have members who are involved with drug enforcement and who, on behalf of PSEA, would gladly testify as to the importance of this legislation.

Sincerely,



Keith Perrin
Business Manager



Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

March 5, 1999

The Honorable Pete Kott
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

**Re: House Bill 3 – An Act Relating to Controlled Substances
And to the Possession of Certain Chemicals**

Dear Representative Kott:

I received a copy this week of the Committee Substitute for Alaska House Bill 3, a bill that would impose criminal penalties for the possession of precursor chemicals if there is intent to manufacture methamphetamine. I am writing to let you know that we were very pleased to see that the Committee had decided to include our suggested changes to this important piece of legislation.

The inclusion of more severe penalties for manufacturing and possessing violations, while maintaining an OTC exemption for legitimate activities involving FDA-approved products, fully addresses our previous concerns with H.B. 3. Eliminating the registration and recordkeeping requirements also is in line with NDMA's belief that legislation such as H.B. 3 should punish the criminals, not the retailers and consumers. We now support H.B. 3 in its current form.

We appreciate yours and the Committee's commitment to working with industry on this key issue. Thank you for the opportunity to work with the Committee and for its consideration of our views on this important legislation. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Nancy A. Bukar
State Government Counsel

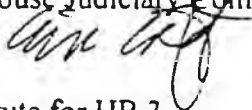
cc: Representative Tom Brice

NAB/jz



REPRESENTATIVE ERIC CROFT

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Rep. Eric Croft 
DATE: 3/1/99
RE: Committee Substitute for HB 3

The ad hoc Committee on HB3 consisted of the following persons meeting at various different times.

Rep. Eric Croft
Rep. Tom Brice
Kevin Jardell, Majority Leader's Office
Cory Winchell, House Judiciary Committee
Bonnie Carroll, Rep. Brice's Office
Samuel Shepard, Rep. Croft's Office
Gerald Luckhaupt, Leg. Legal
Sandy Perry-Provost, Dept. Public Safety
Anne Carpeneti, Dept. of Law
Wilda Rodman, Rep. Therriault's Office

The ad hoc Committee proposes the following CS. We took it as our mission to address and hopefully solve the concerns raised at the initial Judiciary Committee meeting, including the following:

- 1) **REGISTRATION.** The registration provisions in the original bill were costly and cumbersome. The sponsor indicated that he had no objection to removing these provisions if adequate assurance was made that the federal authorities were cooperating with state and local authorities in Alaska. Del Smith made this assurance at the hearing.
- 2) **CLASS A OR B FELONY.** The original bill punished possession of listed chemicals with the intent to manufacture meth as a Class A Felony. Under current law, actual production of meth is a Class B Felony. Punishing the attempt lower than the completed crime raises substantial problems in prosecution and logic.
- 3) **TO LIST OR NOT TO LIST.** There was substantial discussion about the practical difficulties of keeping a controlled substance list current. Members expressed concern that any list not be exclusive.



Some discussion was had about the constitutional difficulties with allowing additions to the controlled substance list by regulation.

- 4) **EXEMPTED DRUGS.** The NPDMA wanted us to be careful to exempt drugs from criminal penalties that are federally regulated. Nobody had any objection to this concern. the only issue was how to accomplish it in our statutes.

The proposed CS meets each of these concerns.

- 1) **REGISTRATION PROVISIONS REMOVED.** The registration provisions have been removed from the CS.
- 2) **BOTH CRIMES CLASS A FELONIES.** After much discussion and analysis of various options, the CS raises both the actual manufacture and possession of listed chemicals with intent to manufacture to a Class A felony. This eliminates the logical oddity. The dangerous nature of meth labs makes this punishment warranted. In addition, making the crime a Class A felony brings it under the felony murder and the eviction power statutes. Under the CS, if a person is killed by a meth lab explosion, the operator of the lab may be guilty of felony murder and a tenant may be evicted for possession of listed chemicals with the intent to manufacture meth even if the lab has not yet produced any product.
- 3) **LIST AND ATTEMPT.** The CS continues to use a list of chemicals and, in fact, combines the List I and II to simplify the statutes. By raising the level of the felony, we have raised the attempt to manufacture meth to a Class B Felony. (In general, attempt is one level lower than the completed crime.) If a person purchases chemicals or other items with the intent to use them to produce meth, this probably a sufficient "substantial step" to convict on attempt. Therefore, the general attempt statutes serve as a catch-all for meth ingredients that are discovered after the effective date of this bill.
- 4) **EXEMPTED DRUGS.** After review, Section 4 as written meets the NPDMA concerns.

Enclosed is a copy of the CS. Call Rep. Brice's office with any questions.

METH: Suspected methamphetamine cook released; loophole found in law

Continued from Page A-1

To extradite, the Bryan County district attorney needed to submit a warrant request to the Oklahoma governor, who in turn would sign it and send it to Alaska Gov. Tony Knowles for approval. Local authorities could then send Anderson back to Oklahoma.

They had 90 days. Bryan County officials, however, didn't begin the process until early September, more than 70 days after Anderson's arrest in Fairbanks.

Beverly Jackson, an extradition secretary in Bryan County, said she waited because Anderson at first said he would return willingly and because she thought Alaska would file felony drugs charges.

The documents were still in the governor's office in Oklahoma when time ran out Sept. 21. Blakely said it was "absolutely" disappointing Anderson slipped through their fingers.

Anderson walked out of jail in Fairbanks on Sept. 22.

Meanwhile, the district attorney's office in Fairbanks had reached a plea agreement with Anderson. He pleaded no contest to driving with a suspended license; the state dismissed the false report charge. That case

Despite provisions in Alaska statutes that say manufacturing methamphetamine constitutes third-degree drug misconduct, a felony, charges were never filed.

"We don't have a statute which makes it illegal to possess precursor drugs," said District Attorney Harry Davis, adding that the state may yet consider pinning other charges on Anderson.

State law says it is illegal to manufacture "any amount" of a controlled substance—suggesting that some amount of finished product must be recovered for the charge to apply, Davis said. It's also a felony to be in possession of certain illegal substances with the intent of using them to make drugs—but many precursors and chemicals used to make methamphetamine apparently are not defined as illegal.

Yet some of those same chemicals are so toxic or volatile that investigators say methamphetamine cooks may be putting an entire neighborhood at risk.

State Rep. Tom Brice, D-Fairbanks, wants to make Alaska's methamphetamine law more clear by defining other precursors as illegal substances. He said he was approached by investigators this summer and plans to introduce legislation next session if re-

"If (investigators) see the boxes of all the precursors going into a house, it will allow them to crack that house before it goes into production," Brice said. "There's nothing else you can do with all that stuff except blow up the block."

Brice's legislation also would require stores to notify authorities when someone buys extremely large quantities of legal, over-the-counter drugs that can be used to make methamphetamine.

Phil Moberly, chief of the Statewide Narcotics Unit based at the district attorney's office in Anchorage, said his team is researching interpretations of stat-

utes applying to methamphetamine labs. He didn't want to comment definitively until after attending a "clandestine lab" class in Anchorage this week.

"Prosecution of (labs) is an evolving thing up here. We don't have a lot of experience with it," Moberly said. "I think we're going to see more."

Moberly has been involved with three methamphetamine lab cases in Anchorage; two of which were prosecuted federally. In the third case, a defunct lab was found in someone's house; the defendant was charged with possession of methamphetamine and maintaining a dwelling con-

taining drug-producing apparatus.

In Fairbanks, two methamphetamine labs have been raided. Crist A. Bigler, the alleged cook at a lab found four days before authorities discovered one in Anderson's trailer, has been charged in federal court.

Assistant U.S. Attorney Stephen Cooper declined to comment Thursday on the possibility of prosecuting the Anderson case, but Roberts said it isn't likely.

Anderson's public defender speculated something must have gone awry in the investigation. If it were simply a loophole in state law, Jim Cannon said federal prosecutors would have just picked up the case.

"The feds have been bleeding chemical under (illegal)," Cannon said. "I guess they found something, but they couldn't use the evidence because the Oklahoma governor never came up with a warrant, and the guy sat in jail for 90 days."

Roberts countered that investigators had done everything by the book—and if they had, attorneys would have told about it.

He pledged Saturday to sleuthing out meth labs.

"Regardless of what the limitations are, it's not going to stop our efforts to investigate and bring them down," he said. "It's still illegal."

Meth lab suspect released

Loophole in law halts charges

By JOLIE LEWIS
Staff Writer

Highly explosive materials stored near exposed live wires; hazardous chemicals left uncapped in a trailer where two people lived: Authorities characterized the methamphetamine lab as unusually dangerous. In this disappointment, the 42-year-old Oklahoma transplant and the lab's alleged drug cook is now back on the streets three months after his arrest.

Oklahoma failed to produce a governor's warrant for Raymond C. Anderson's extradition before a 90-day window expired Sept. 21, and Alaska never filed drug charges.

Methamphetamine lab—described as extremely dangerous operations by Alaska State Troopers Statewide Drug Enforcement Unit investigators—are a new enough



Sam Harrel News-Miner

METH LAB—In this summer file photo, an investigator enters an Atco building suspected to be a methamphetamine lab Wednesday in a junk yard off the Old Richardson Highway south of North Pole.

criminal trend in Alaska that prosecutors are just now discovering, a possible loophole in state statute.

The chemical process Anderson allegedly used to cook the drug may not be illegal.

"Somewhere, the system has failed," said Jeff Deutsch, the North Pole police officer who first sought a warrant for Anderson's arrest on a traffic charge. "Now it becomes a community problem again."

But Sgt. J.R. Roberts, chief of the local drug enforcement unit, said the setback should almost have been expected.

"It's something that's new to Alaska," Roberts said of meth labs. "It's new to the system. It's new to us. We're all novices when it comes to this."

North Pole police and drug investigators in mid-June converged on the junkyard Atco unit where Anderson apparently lived with his teen-age son. They had a warrant al-

leging Anderson had provided a false name during a traffic stop—his own license was suspended—and had fled from justice in Oklahoma.

Authorities didn't find Anderson that day, but they did discover hazardous chemicals and drug-manufacturing apparatus in a "poor man's" set-up that spooked even experienced methamphetamine lab investigators. There were no drugs, however.

Anderson was arrested a week later in a Fairbanks apartment on the warrant.

Oklahoma authorities said they would extradite. Though Anderson was wanted in two counties in southeastern Oklahoma, prosecutors from one took charge of extradition.

In this case, it was Bryan County, where Anderson was wanted for failing to show up in court in January on charges of possessing methamphetamine and marijuana after a felony conviction. Further drugs

charges are pending in other cases, said assistant district attorney Greg Jenkins.

In neighboring Choctaw County, Anderson missed court dates in cases alleging he delivered drugs and conspired to manufacture them. Assistant District Attorney Maria Blakely said Anderson has a "whole slew" of prior drugs convictions.

Oklahoma bondsman Wayne Holder, an agent for a company that posted more than \$30,000 of bonds on Anderson's behalf in Choctaw County, searched for Anderson for approximately six months. He tracked Anderson to Fairbanks and provided information to local investigators.

"It was just a long, hard deal," said Holder, who ultimately salvaged the company's bond. "We did our job. We got him incarcerated up there. ... As bondsmen, we're exonerated."

See METH Page A-3



RAYMOND ANDERSON

03/31/99
13:55:09

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LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

HB 3	BLAIR	MCCUNE	PUBLIC DEFEND	TESTIFY
HB 161	ERNEST	DUMMANN	DU ALASKA.	TESTIFY
HB 161	JOHN	WOODWARD		TESTIFY
HB 161	ROBYN	HENRY		TESTIFY
HB 161	KARLEEN	JACKSON		TESTIFY
HB 161	JEFF	JESSEE		TESTIFY

LOCATION: FAIRBANKS

HB 161	MR.	AL	AARON	NAMI OF FBKS	TESTIFY
HB 161	MS.	KATE	DAS	NAMI OF FBKS	TESTIFY
HB 161	MS.	JEANNETTE	GRASTO	NAMI OF FBKS	TESTIFY
HB 161	MS.	CHERYL	WHEAT	NAMI OF FBKS	TESTIFY
HB 161	MR.	GENE	GRASTO	NAMI OF FBKS	TESTIFY

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