

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2203 (McCarty) – As Amended April 4, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: Ticket sellers: electronic tickets

SYNOPSIS

This bill, as proposed to be amended, is intended to strengthen consumer protections in both the primary and secondary markets by requiring ticket sellers to provide an immediate proof of purchase that is linked to an individual ticket or multiple tickets and that the consumer can save or download to an electronic wallet that will allow them entrance into the venue, in the event that they are unable to access their electronic tickets.

With the suggested Committee amendments, this bill would:

- 1. Require that a ticket seller in the primary or secondary market immediately send a proof of purchase or receipt that is linked to an actual ticket to the consumer.*
- 2. Require that an entertainment venue operator honor a legitimate proof of purchase in lieu of a ticket if the consumer cannot access the electronic ticket at the time of the event.*
- 3. Limit the ability of a ticket seller to sell tickets that they do not either have in their possession or have a contract to sell individual tickets assigned to specific seats (unless the tickets are general admission).*
- 4. Clarify that a consumer is an individual who purchases a ticket or tickets to an entertainment event with the intention of attending that event.*

The amended version of the bill will significantly strengthen consumer protections in the area of live entertainment. Given the confusion faced by consumers when they go on-line to purchase tickets to an entertainment event and the significant cost associated with the purchase of those tickets, especially those purchased in the resale market, it is important that consumers know that what they have paid for is an actual, valid ticket. Toward that end, under this bill consumers would be able to obtain a valid proof of purchase associated with each individual ticket and venue operators must honor those legitimate proofs of purchase in the event the electronic tickets are not accessible.

In addition, by requiring a proof of purchase rather than sending a ticket far in advance of an event, this bill would help protect venue operators by allowing them to continue to delay the delivery of tickets in order to reduce the amount of time people have to fraudulently duplicate and resell them on the secondary market.

This bill was heard by the Arts, Entertainment, Sports, and Tourism Committee in its current version and passed on a 6-0-1 vote.

SUMMARY: Requires a ticket seller to provide an immediate proof of purchase to a consumer and requires a venue operator to honor a proof of purchase for a ticket for entrance to an entertainment venue, if a consumer does not have access to the ticket at the time of the event. Specifically, **this bill:**

- 1) Establishes the Fair Ticketing Practices Act.
- 2) Defines the following:
 - a) “Consumer” means a natural person or persons who purchase tickets to an entertainment event with the express purpose of attending that event.
 - b) “Entertainment event” means forms of entertainment including, but not limited to, theatrical or operatic performances, concerts, and professional athletic competitions including football, basketball, baseball, boxing, tennis, hockey, and any other professional sport. The term does not apply to entertainment that’s primary purpose is not a performance or sporting event on a specific date at a specific time.
 - c) “Entertainment venue” means a publicly or privately owned place of live entertainment including, but not limited to, an arena, auditorium, concert hall, live performance venue, racetrack, stadium, theater, or other place where live entertainment events are presented for a price of admission. The term does not apply to an amusement park, fair ground, museum, or other venue where the primary purpose is to provide interactive entertainment that allows the consumer to engage with different exhibits and activities.
 - d) “Proof of purchase” means a receipt for the purchase of a ticket that is delivered electronically in a manner that allows it to be downloaded, copied, or saved in an electronic wallet and that contains a unique identifier linking it to the actual ticket purchased by the consumer.
 - e) “Ticket seller” means a primary contractor as defined in Section 22503.5, ticket seller, or agent of the primary contractor or ticket seller that engages in the initial sale of tickets for an entertainment event; an individual or business that is re-selling tickets to consumers for an entertainment event; or an on-line ticket selling marketplace where consumers are able to purchase tickets for a live event.
 - f) “Venue operator” means any person who owns, operates, manages, or controls an entertainment facility.
- 3) Requires a ticket seller to, upon purchase, immediately deliver an electronic proof of purchase that can be tied to a ticket that will be delivered prior to the event.
- 4) Requires the venue operator to honor a legitimate proof of purchase linked to an existing ticket for entrance to an entertainment venue in lieu of an actual ticket, if the consumer cannot access their ticket, the proof of purchase is legitimate, and linked to an existing ticket.
- 5) Establishes a civil penalty of up to \$2500 for each violation that may be brought on behalf of the people of California by the Attorney General, a district attorney, county counsel, a city attorney, or a city prosecutor.

EXISTING LAW:

- 1) Defines a “ticket seller” as any person who for compensation, commission, or otherwise sells admission tickets to sporting, musical, theatre, or any other entertainment event. (Bus. & Prof. Code § 22503.)
- 2) Clarifies that the following are not ticket sellers for purposes of existing law:
 - a) An officially appointed agent of an air carrier, ocean carrier, or motor coach carrier who purchases or sells tickets in conjunction with a tour package.
 - b) Any person who sells six tickets or less to any one single event, provided the tickets are sold off the event premises, including, but not limited to, designated parking areas and points of entry to the event.
 - c) The person or organization responsible for the event for which tickets are being sold, or a seller of tickets operating under a written contract with this person or organization.
 - d) Any nonprofit charitable tax-exempt organization selling tickets to an event sponsored by the organization. (Bus. & Prof. Code §§ 22503.5, 22503.6, 22504, 22511.)
- 3) Requires that ticket sellers:
 - a) Maintain records of ticket sales, deposits, and refunds. (Bus. & Prof. Code § 22501.)
 - b) Prior to sale, disclose to the purchaser by means of description or a map the location of the seat or seats represented by the ticket or tickets. (Bus. & Prof. Code § 22502.)
 - c) Make any partial or full deposit refundable if received on a future event for which tickets are not available, except for a service charge of not more than 10 percent, until such time as tickets for the event are actually available. (Bus. & Prof. Code § 22506.)
 - d) Provide a refund within 30 days for the ticket price of an event that is canceled. (Bus. & Prof. Code § 22507(a).)
 - e) Provide a refund, upon request, within 30 days, for the ticket price of an event which is postponed, rescheduled, or replaced with another event at the same date and time. (Bus. & Prof. Code § 22507(b).)
 - f) Provide that a local jurisdiction may require a bond of not more \$50,000 to cover required refunds. (Bus. & Prof. Code § 22507(d).)
 - g) Disclose that a service charge is imposed by the ticket seller and is added to the actual ticket price by the seller in any advertisement or promotion for any event by the ticket seller. (Bus. & Prof. Code § 22508.)
- 4) Prohibits a ticket seller from contracting to sell or accepting payment for tickets unless the ticket seller:
 - a) Has lawful possession of the ticket;

- b) Has a contractual right to obtain the ticket; or
 - c) Informs the purchaser, in a specified manner, that it does not have possession of the ticket, has no contract to obtain the offered ticket, and may not be able to supply the ticket at the contracted price. (Bus. & Prof. Code § 22502.1.)
- 5) Authorizes a ticket seller to accept a deposit from a prospective purchaser as part of an agreement that the ticket seller will make best efforts to obtain a ticket at a specified price or price range and within a specified time, provided that the ticket seller informs the purchaser, in a specified manner, of the terms of the deposit agreement and makes required disclosures. (Bus. & Prof. Code § 22502.1.)
- 6) Prohibits a ticket seller from representing that it can deliver or cause to be delivered a ticket at a specific price or within a specific price range and fail to deliver the ticket a) within a reasonable time and b) below or within the price and range of prices stated. (Bus. & Prof. Code § 22502.2.)
- 7) Provides a private right of action to ticket purchasers for violations of 5) and 6). (Bus. & Prof. Code § 22502.3.)
- 8) Declares it unlawful for a person to intentionally use or sell software or services to circumvent a security measure, access control system, or other control or measure (including limits on the number of tickets a person can purchase) that is used to ensure an equitable ticket buying process for event attendees. (Bus. & Prof. Code § 22502.5.)
- 9) Deems a violation of the chapter of the Business and Professions Code containing the provisions above to be a misdemeanor. (Bus. & Prof. Code § 22505.)
- 10) Requires a ticket seller to have a permanent business address from which tickets may only be sold and that the address be included in any advertisement or solicitation. Makes a violation of this requirement a misdemeanor punishable by imprisonment or a fine not exceeding \$2,500 or by both, and provides for civil penalties of up to \$2,500 for violations. (Bus. & Prof. Code § 22500.)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

1) **Background.** Gone are the days of camping out overnight in line at a box office hoping to get tickets to a Van Halen, Madonna, or Michael Jackson concert or to one of your favorite team's games. In that pre-internet era, if overnight camping was not an option, a person could try calling the box office over and over hoping to break through the busy signal to get an actual person who can sell tickets over the phone, in the hopes that the tickets have not sold out already. If those efforts failed, a fan could listen to their favorite radio station for hours at a time hoping to score free tickets through a call-in giveaway contest. Finally, if nothing else worked and the day of the concert or game arrived, they could take the chance of going to the venue in the hopes of finding a scalper standing in the parking lot, or near the entrance to the venue, holding up a couple of tickets for sale at a premium cash price. Of course, this last-ditch effort meant that fans ran the

risk of being ripped off by a scalper selling fake tickets. But diehard fans often considered it a chance worth taking.

Buying tickets online. While some things remain unchanged for the music and sports fan, technology and the internet have profoundly changed the experience of ticket buying. The live entertainment ticket ecosystem is now simultaneously much more complicated and much more convenient. Largely gone are the days of box offices and paper tickets. Now, in theory, when tickets go on sale for a concert or a game, fans go to the online ticket platform that is selling those tickets (often Ticketmaster) to purchase them and then have them delivered electronically. However, the reality is more complicated, depending how the consumer enters the online market place.

Today, the ticket market is broken down into on-sale primary vendors, comprised of venues and online primary ticket platforms, and the secondary (or resale) market, made up of ticket brokers and resale marketplace platforms, such as StubHub, SeatGeek, and Vivid Seats. Adding to the confusion, there is significant crossover between the two markets. For example, Ticketmaster operates a resale platform and SeatGeek operates as both a primary and secondary platform. When multiple secondary platforms and the on-sale primary vendor are all competing for ticket buyers, it can be very difficult for consumers to know where to buy tickets or even whether or not they are getting an actual ticket.

The primary market. The primary market is one in which event organizers control the ticket price, the sharing of the revenue between the artist, venue operator, and ticket company, and which platform will sell the tickets. The prices set in the primary market heavily affect the volume and value of tickets in the secondary market. In general, it is most common to find underpriced tickets—tickets that sell on the primary market with a face value that is below their market value—so that event organizers can maximize the attendance of their target audience in order to increase customer loyalty, and merchandise sales.¹ To complicate ticket selling in the primary market, some artists have been known to hold back a certain number of tickets to sell on the resale market in order to take advantage of the higher prices while still maintaining fan loyalty by offering the initial tickets at a low price.²

The secondary market. The secondary market is where tickets purchased on the primary market are resold. Ticket prices are usually significantly higher when purchased from someone in the secondary market. A study conducted by the National Independent Talent Organizations (NITO) analyzed data from 65 different shows around the country in 2023 where artists represented by NITO members performed. According to their findings, on average, ticket buyers were charged twice as much when buying tickets in the secondary market.³ Secondary market platforms not only serve as a way for professional ticket brokers (i.e. businesses that purchase event tickets solely for the purpose of reselling them for a profit) to sell tickets, they also play an important role by allowing consumers who can no longer use their tickets a relatively simple way of recouping their money and perhaps making a profit by reselling them to someone else.

¹ *The Event Ticketing Industry is Broken and in Need of Disruption*, Aventus Network (May 19, 2017).

² Tyler Jenke, “Ed Sheeran’s manager has admitted to selling tickets to resale services,” *The Music Network* (Jun 3, 2018) available at <https://themusicnetwork.com/ed-sheeran-manager-sold-tickets-resale/>.

³ *NITO Ticket Resale Study*. National Independent Talent Organization (Jul 2023)

The platforms, for a fee, provide the infrastructure and technology that make up the marketplace for brokers and individuals to resell their tickets. Professional ticket brokers either enter into agreements with sports teams and promoters to have access to tickets for resale or they compete with consumers in the primary marketplace to purchase tickets that they intend to resell at a profit on the platforms. These secondary market platforms, such as StubHub, Vivid Seats, TickPicks, SeatGeek, and the secondary platforms run by Ticketmaster and their main competitor AXS, generally speaking, are similar to eBay (the former parent company for StubHub) or Etsy, meaning that individual entities, who are generally not associated with the platform, are the ones selling the merchandise – tickets, in this case.

Speculative ticket sales. A speculative ticket refers to instances in which a seller offers a ticket for sale on a secondary ticket exchange before the seller has the ticket in hand. In some cases, secondary sellers may not disclose the fact that they are selling speculative tickets. These practices harm consumers who either do not receive the tickets they purchased or receive tickets that differ from the ticket or seat advertised. Even if consumers receive refunds for the ticket price, they may have already incurred nonrefundable costs to attend the event, such as travel or hotel expenses.⁴

For over a decade, secondary resale markets have allowed the sale of tickets that sellers do not actually possess. Specifically, speculative ticket sales work as follows, according to the Center for Investigative Reporting:

Brokers advertise inventory – sometimes a specific seat, sometimes a seating area – on a resale site, often at a price significantly higher than face value. When a customer selects tickets and checks out, [the site] prompts the broker to then attempt to acquire those tickets elsewhere at a lower price. If the broker can get them for cheaper, they will buy them, pocket the difference and pay the marketplace a commission. If they can't, the broker will either have to make good on the initial offer and take a loss or renege on the sale.⁵

Ticket brokers often refer to this practice as the equivalent of agreeing to stand in line for someone at the box office. They will buy tickets when they go on sale, so that the consumer does not have to wait in front of their computer constantly refreshing their web browser. However, the consumer is often not aware that they are buying a ticket that the seller does not possess, nor do they realize they are paying a premium price, significantly above the face value, for a ticket that they may or may not receive.

This practice creates considerable confusion for consumers who cannot purchase tickets from the primary box office because they have not gone on sale yet, but appear to be able to purchase tickets for a premium price on the secondary market. As a recent example, before the tickets for a Justin Timberlake concert scheduled for May in San Jose were officially on sale through Ticketmaster, they were advertised for sale on a number of secondary platforms. In fact, the first three websites at the top of an internet search were already selling tickets. The first website, StubHub, offered tickets for sale and nothing easily identifiable on the platform suggested that the tickets were speculative. The next website, VividSeats, indicated in the “notes” section that

⁴ Ibid.

⁵ Duncan, Byard. “How is this Legal?” *The Center for Investigative Reporting*, March 8, 2021, available at <https://revealnews.org/article/how-is-this-legal/>.

the tickets being purchased were a “seat saver” listing and that the purchaser will either receive the tickets or a full refund. The third website, “TicketsOffice.org” also did not advertise the tickets as speculative.

Why a ticket may not be delivered immediately. Along with either knowingly or unknowingly purchasing a speculative ticket that the seller does not own yet or that has not gone on sale to the public, one of the strategies often used by ticket sellers and venues is delaying the delivery of the actual electronic ticket until close to the event. Venue operators have found that delaying delivery as long as possible provides less time for fraudulent resellers to replicate the tickets and sell the fake tickets through the secondary marketplace.

During a February 2024 informational hearing held by this Committee on entertainment ticketing, venue operator after venue operator expressed frustration with having to deal with angry and frustrated fans who showed up at the venue with tickets that were fake. According to their testimony, this is a growing problem and for many of them it is happening every night that there is a show at their venue. Given this struggle, it is understandable that the unintended consequences of requiring early delivery of tickets could make the problem of fraudulent tickets worse.

2) **Purpose of this bill.** This bill is intended to address a problem for consumers that occurs regardless of whether someone is purchasing a ticket in the primary or secondary market. What happens if, at the time of the event, a consumer cannot access their electronic ticket for some reason? With the overwhelming majority of live events relying on electronic tickets and not allowing ticketholders to print copies of their tickets ahead of time or screenshot their ticket, it leaves consumers vulnerable to not having access to their ticket at the time of the event for a myriad of reasons – lost login passwords for the ticket site, no internet connection, lost emails, to name a few. Without the ability to pull up a ticket on a smartphone that is connected to the internet, a consumer would most likely be denied entrance to the venue for the show or game that they paid for.

Under this bill, when those instances occur, a ticketholder would be allowed to produce a proof of purchase that is capable of being linked to the actual ticket sold by the venue. Once the venue operator verifies the proof of purchase is legitimate, they must allow the consumer entrance into the event.

3) **Author’s statement.** According to the author:

The Fair Ticketing Practices Act represents a significant step towards ensuring fairness, transparency, and consumer protection in selling electronic tickets for events statewide. By establishing clear guidelines for sellers and providing consumers with greater confidence in their ticket purchases, this legislation aims to create a more trustworthy and consumer-friendly ticketing industry.

4) **Proposed Committee amendments.** As the bill came to this Committee it had been narrowed in such a way that it no longer addressed the problem the author is hoping to solve. In working with the author, the Committee has recrafted the bill so that it functions as intended. The amendments do the following:

Amendment #1: Removes the contents of the bill.

~~22502.4. Notwithstanding Section 22504, it shall be unlawful for a ticket seller to sell the same ticket to more than one person on the secondary market with the intent to cancel all but one sale before the date of the event. market.~~

Amendment #2: Replaces it with the following:

TITLE X.XX.X. The Fair Ticketing Practices Act.⁶

22512. For the purposes of this title:

(a) “Consumer” means a natural person or persons who purchase tickets to an entertainment event with the express purpose of attending that event.

(b) “Entertainment venue” means a publicly or privately owned place of live entertainment including, but not limited to, an arena, auditorium, concert hall, live performance venue, racetrack, stadium, theater, or other place where live entertainment events are presented for a price of admission. The term does not apply to an amusement park, fair ground, museum, or other venue where the primary purpose is to provide interactive entertainment that allows the consumer to engage with different exhibits and activities.

(c) “Entertainment event” means forms of entertainment including, but not limited to, theatrical or operatic performances, concerts, and professional athletic competitions including football, basketball, baseball, boxing, tennis, hockey, and any other professional sport. The term does not apply to entertainment that’s primary purpose is not a performance or sporting event on a specific date at a specific time.

(d) “Proof of purchase” means a receipt for the purchase of a ticket that is delivered electronically in a manner that allows it to be downloaded, copied, or saved in an electronic wallet and that contains a unique identifier linking it to the actual ticket purchased by the consumer.

(e) “Ticket seller” means a primary contractor as defined in Section 22503.5, ticket seller, or agent of the primary contractor or ticket seller that engages in the initial sale of tickets for an entertainment event; an individual or business that is re-selling tickets to consumers for an entertainment event; or an on-line ticket selling marketplace where consumers are able to purchase tickets for a live event.

(f) “Venue operator” means any person who owns, operates, manages, or controls an entertainment facility.

22512.1 (a) A ticket seller shall immediately upon purchase of an entertainment event ticket deliver an electronic proof of purchase to the consumer that can be tied to an actual ticket for an entertainment event that will be delivered prior to the event.

(b) A venue operator shall honor a proof of purchase linked to an existing ticket for entrance to an entertainment venue in lieu of an actual ticket, if the consumer cannot access their ticket, the proof of purchase is legitimate, and it is linked to an existing ticket.

⁶ The appropriate section of the code and the correct formatting of the amendments will be determined by Legislative Counsel.

22512.2 A person who violates this title shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in an action brought in the name of the people of the State of California by the Attorney General, a district attorney, county counsel, a city attorney, or a city prosecutor. In addition, the court shall award a prevailing public prosecutor reasonable costs and attorney's fees. For purposes of this section, each ticket sold without the required proof of purchase or each proof of purchase not honored by a venue operator in violation of this section shall constitute a separate violation. The remedies provided by this section are in addition to the remedies or penalties available under all other laws of this state.

5) **What this bill will do.** With the suggested Committee amendments, this bill would:

1. Requires that a ticket seller in the primary or secondary market immediately send a proof of purchase or receipt that is linked to an actual ticket to the consumer.
2. Requires that an entertainment venue operator honor a legitimate proof of purchase in lieu of a ticket if the consumer cannot access the electronic ticket at the time of the event.
3. Limits the ability of a ticket seller to sell tickets that they do not either have in their possession or have a contract to sell individual tickets assigned to specific seats (unless the tickets are general admission).
4. Clarifies that a consumer is an individual who purchases a ticket or tickets to an entertainment event with the intention of attending that event.

6) **Analysis.** As proposed to be amended, this bill will significantly strengthen consumer protections in the area of live entertainment. Given the significant confusion faced by consumers when they go on-line to purchase tickets to an entertainment event and the significant cost associated with the purchase of those tickets, it is important that consumers be able to obtain a valid proof of purchase that is associated with each individual ticket they have purchased. In light of current restrictions against screenshotting or printing tickets in advance, this bill includes an important provision that the consumer must receive a proof of purchase in a format that can be easily saved or that can be downloaded into an electronic wallet for easy access.

In addition, by requiring an immediate proof of purchase rather than sending tickets far in advance of an event, this bill would help protect venue operators by allowing them to continue to delay the delivery of tickets in order to reduce the amount of time people have to fraudulently duplicate and resell the tickets on the secondary market.

Finally, this bill will make two additional significant changes. It will reduce the ability for people to sell speculative tickets because it requires that the proof of purchase be delivered immediately upon payment *and* that the proof of purchase be linked in some way to an actual, existing ticket. The bill will also clarify in statute exactly who the consumer is in the live entertainment ticket market. A consumer is simply someone who wants to purchase tickets to attend live entertainment events. It is not someone who purchases tickets as an investment with plans to resell them to make a profit off of consumers while adding no additional value or service.

7) **Related legislation.** AB 2808 (Wicks, 2024) limits the ability of venue operators and primary ticket sellers to enter into long-term, exclusive contracts. That bill is being heard by the Committee at the same time as this bill.

AB 8 (Friedman, 2023) would have required a ticket seller to disclose to a purchaser the total price of the ticket and the portion of that price that represents any fees or surcharges. The seller must also provide a link to an internet web page that includes certain refund requirements, as specified. AB 8 was held under submission on the Senate Appropriations Committee suspense file.

AB 1556 (Friedman, Chap. 180, Stats. 2021) required, for cancelled events, that a refund be made within 30 calendar days of the cancellation. It further required a ticket price at any event which is postponed, rescheduled, or replaced with another event at the same date and time be fully refunded to the purchaser by the ticket seller upon request within 30 calendar days of the refund request.

AB 1032 (Quirk, Chap. 105, Stats. 2019) bolstered anti-bot provisions enacted by AB 329, described below, by clarifying that “a control or measure used to ensure an equitable ticket buying process” includes limits on the number of tickets that a person can purchase.

AB 329 (Pan, Chap. 325, Stats. 2013) made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure on a ticket seller’s internet website that is used to ensure an equitable ticket buying process.

SB 478 (Dodd, Chap. 400, Stats. 2023) makes it an unlawful business practice pursuant to the Consumer Legal Remedies Act to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government.

SB 785 (Caballero, 2023) would update laws regulating ticket sales by establishing new categories of ticket sellers, establishing requirements for different categories of ticket sellers, and increasing penalties for violations of rules governing ticket seller operations. That bill is currently pending in this Committee.

SB 829 (Wilk, 2023) prohibits the operator of an entertainment facility and a primary ticket seller from entering into a contract that provides for the primary ticket seller to be the exclusive ticket seller for the operator of the entertainment facility. That bill is currently pending in the Arts, Entertainment, Sports, and Tourism Committee.

ARGUMENTS IN SUPPORT:

The National Independent Venue Association (NIVA) of California writes in support of the bill currently in print:

Independent music venues are struggling across California, in large part due to the overwhelming amount of fraud in the secondary ticket seller marketplace. Oftentimes, ticket resellers will sell the same ticket to multiple people, which is not only a fraudulent practice that negatively affects the consumer, but also leaves our venues to deal with the negative impacts. As venues, we are the first responders and also the provider of the benefit of the bargain of the ticket—we sell the tickets, we man the box office, we handle the rope lines, we book and promote the show, and we provide all the logistics necessary for the artists on our stages to put on the show. We are involved in every aspect, including having to speak to guests who unfortunately bought a fake ticket or were sold the same ticket a different individual used to enter the venue.

REGISTERED SUPPORT / OPPOSITION:

Support

National Independent Venue Association of California
Stubhub, INC.

Opposition

None on file.

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