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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 287

**Introduced by Assembly Members Gordon, Eggman, and
Mark Stone
(Principal coauthor: Assembly Member Wilk)
(Coauthors: Assembly Members Dababneh, Jones, and Lackey)**

February 11, 2015

An act to amend Sections 3065 and 11705 of, and to add Article 1.1 (commencing with Section 11750) to Chapter 4 of Division 5 of, the Vehicle Code, relating to vehicle safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 287, as amended, Gordon. Vehicle safety: recalls.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the

manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the manufacturer, except as specified. A violation of the Vehicle Code is a crime.

This bill would enact the Consumer Automotive Recall Safety Act, which would prohibit a dealer or rental car company, as defined, with a motor vehicle fleet of 34 or fewer loaner or rental vehicles from loaning, renting, or offering for loan or rent a vehicle subject to a manufacturer's recall after receiving a notice of the recall, as specified, until the vehicle has been repaired, except as specified. The act would also require the Department of Motor Vehicles (DMV) to ~~obtain a recall database report before mailing a notice of registration renewal to the registered owner of a vehicle and, if the recall database report indicates the vehicle is subject to a manufacturer's recall, to include a specified recall disclosure statement with the notice of registration renewal.~~ *each vehicle registration renewal notice.* This requirement would not take effect until the Director of Motor Vehicles executes a declaration, as specified, certifying that the department has appropriate access to the necessary data within a recall database and available funding to include the recall disclosure statement. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

Existing law requires a vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing.

This bill would specify that the warranty obligations include all costs directly associated with the disposal of hazardous materials that are associated with a recall repair. The bill would provide, for purposes of the above-described warranty obligations, that a warranty includes a recall conducted pursuant to federal motor vehicle safety laws. The bill would state that this provision is declaratory of existing law.

Existing law authorizes the DMV to suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the licensed was issued has

done, among other things, violate provisions relating to issuance of licenses and certificates to manufacturers, transporters, and dealers.

This bill would also authorize the DMV to suspend or revoke the license issued to the above-mentioned persons upon determining that the person has violated any provision of the Consumer Automotive Recall Safety Act.

The bill would state findings and declarations of the Legislature relative to vehicle recalls.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Over the past one-half decade, automakers and the National
4 Highway Traffic Safety Administration have issued more recalls
5 on new and used motor vehicles than ever before. The year 2014
6 set the record for the most recalls on vehicles in United States
7 history with over 63.8 million vehicles recalled. The rate of vehicle
8 recalls has exponentially grown over this past one-half decade as
9 51 million recalls were issued in 2015, 22 million recalls were
10 issued in 2013, and 16.2 million were issued in 2012. The increase
11 of recalls in 2014 is a 190 percent increase from 2013 and a 293.8
12 percent increase from 2012.

13 (2) While federal motor vehicle safety standards are more
14 demanding now than at any other point in time and new vehicles
15 sold today are the safest in history, the exponential growth of
16 recalls issued on motor vehicles has caused confusion and apathy
17 for far too many Californians. According to the National Highway
18 Traffic Safety Administration and others, about one-third of all
19 recalled vehicles are never repaired by the vehicle's owner.

20 (3) Federal regulations now require most vehicle manufacturers
21 to provide motor vehicle safety recall information applicable to
22 the vehicles they manufacture on the Internet and to the public.

1 (b) Accordingly, it is the intent of the Legislature in enacting
2 this act to increase consumer awareness of unrepaired recalls on
3 their cars and to ensure that consumers have access to loaner and
4 rental vehicles free of any unrepaired recalls.

5 (c) The Legislature further finds and declares all of the
6 following:

7 (1) The distribution, sale, and service of new motor vehicles in
8 the State of California vitally affect the general economy of this
9 state and the public welfare.

10 (2) The new motor vehicle franchise system, which operates
11 within a strictly defined and highly regulated statutory scheme,
12 assures the consuming public of a well-organized distribution
13 system for the availability and sale of new motor vehicles
14 throughout the state, provides a network of quality warranty, recall,
15 and repair facilities to maintain those vehicles, and creates a
16 cost-effective method for the state to police those systems through
17 the licensing and regulation of private sector franchisors and
18 franchisees.

19 (3) California franchise laws require manufacturers to provide
20 reasonable reimbursement to dealers for warranty and recall work,
21 but fail to establish guidelines for compensating franchisee disposal
22 costs associated with hazardous waste generated by repairs on
23 recalled vehicles.

24 (d) Accordingly, it is the intent of the Legislature in enacting
25 this act to ensure that new motor vehicle dealer franchisees are
26 treated fairly by their franchisors and that new motor vehicle dealer
27 franchisees are reasonably compensated for repairs on recalled
28 vehicles.

29 SEC. 2. Section 3065 of the Vehicle Code is amended to read:

30 3065. (a) Every franchisor shall properly fulfill every warranty
31 agreement made by it and adequately and fairly compensate each
32 of its franchisees for labor and parts used to fulfill that warranty
33 when the franchisee has fulfilled warranty obligations of
34 diagnostics, repair, and servicing and shall file a copy of its
35 warranty reimbursement schedule or formula with the board. The
36 warranty reimbursement schedule or formula shall be reasonable
37 with respect to the time and compensation allowed to the franchisee
38 for the warranty diagnostics, repair, servicing, and all other
39 conditions of the obligation, including costs directly associated
40 with the disposal of hazardous materials that are associated with

1 a recall repair. The reasonableness of the warranty reimbursement
2 schedule or formula shall be determined by the board if a franchisee
3 files a protest with the board. A franchisor shall not replace,
4 modify, or supplement the warranty reimbursement schedule to
5 impose a fixed percentage or other reduction in the time and
6 compensation allowed to the franchisee for warranty repairs not
7 attributable to a specific repair. A franchisor may reduce the
8 allowed time and compensation applicable to a specific warranty
9 repair only upon 15 days' prior written notice to the franchisee.
10 Any protest challenging a reduction in time and compensation
11 applicable to specific parts or labor operations shall be filed within
12 six months following the franchisee's receipt of notice of the
13 reduction, and the franchisor shall have the burden of establishing
14 the reasonableness of the reduction and adequacy and fairness of
15 the resulting compensation.

16 (b) In determining the adequacy and fairness of the
17 compensation, the franchisee's effective labor rate charged to its
18 various retail customers may be considered together with other
19 relevant criteria. If in a protest permitted by this section filed by
20 any franchisee the board determines that the warranty
21 reimbursement schedule or formula fails to provide adequate and
22 fair compensation or fails to conform with the other requirements
23 of this section, within 30 days after receipt of the board's order,
24 the franchisor shall correct the failure by amending or replacing
25 the warranty reimbursement schedule or formula and implementing
26 the correction as to all franchisees of the franchisor that are located
27 in this state.

28 (c) If any franchisor disallows a franchisee's claim for a
29 defective part, alleging that the part, in fact, is not defective, the
30 franchisor shall return the part alleged not to be defective to the
31 franchisee at the expense of the franchisor, or the franchisee shall
32 be reimbursed for the franchisee's cost of the part, at the
33 franchisor's option.

34 (d) (1) All claims made by franchisees pursuant to this section
35 shall be either approved or disapproved within 30 days after their
36 receipt by the franchisor. Any claim not specifically disapproved
37 in writing within 30 days from receipt by the franchisor shall be
38 deemed approved on the 30th day. All claims made by franchisees
39 under this section and Section 3064 for labor and parts shall be
40 paid within 30 days after approval.

1 (2) A franchisor shall not disapprove a claim unless the claim
2 is false or fraudulent, repairs were not properly made, repairs were
3 inappropriate to correct a nonconformity with the written warranty
4 due to an improper act or omission of the franchisee, or for material
5 noncompliance with reasonable and nondiscriminatory
6 documentation and administrative claims submission requirements.

7 (3) When any claim is disapproved, the franchisee who submits
8 it shall be notified in writing of its disapproval within the required
9 period, and each notice shall state the specific grounds upon which
10 the disapproval is based. The franchisor shall provide for a
11 reasonable appeal process allowing the franchisee at least 30 days
12 after receipt of the written disapproval notice to provide additional
13 supporting documentation or information rebutting the disapproval.
14 If disapproval is based upon noncompliance with documentation
15 or administrative claims submission requirements, the franchisor
16 shall allow the franchisee at least 30 days from the date of receipt
17 of the notice to cure any material noncompliance. If the disapproval
18 is rebutted, and material noncompliance is cured before the
19 applicable deadline, the franchisor shall approve the claim.

20 (4) If the franchisee provides additional supporting
21 documentation or information purporting to rebut the disapproval,
22 attempts to cure noncompliance relating to the claim, or otherwise
23 appeals denial of the claim and the franchisor continues to deny
24 the claim, the franchisor shall provide the franchisee with a written
25 notification of the final denial within 30 days of completion of the
26 appeal process, which shall conspicuously state “Final Denial” on
27 the first page.

28 (5) Failure to approve or pay within the above specified time
29 limits, in individual instances for reasons beyond the reasonable
30 control of the franchisor, shall not constitute a violation of this
31 article.

32 (6) Within six months after either receipt of the written notice
33 described in paragraph (3) or (4), whichever is later, a franchisee
34 may file a protest with the board for determination of whether the
35 franchisor complied with the requirements of this subdivision. In
36 any protest pursuant to this subdivision, the franchisor shall have
37 the burden of proof.

38 (e) (1) Audits of franchisee warranty records may be conducted
39 by the franchisor on a reasonable basis for a period of nine months
40 after a claim is paid or credit issued. A franchisor shall not select

1 a franchisee for an audit, or perform an audit, in a punitive,
2 retaliatory, or unfairly discriminatory manner. A franchisor may
3 conduct no more than one random audit of a franchisee in a
4 nine-month period. The franchisor's notification to the franchisee
5 of any additional audit within a nine-month period shall be
6 accompanied by written disclosure of the basis for that additional
7 audit.

8 (2) Previously approved claims shall not be disapproved or
9 charged back to the franchisee unless the claim is false or
10 fraudulent, repairs were not properly made, repairs were
11 inappropriate to correct a nonconformity with the written warranty
12 due to an improper act or omission of the franchisee, or for material
13 noncompliance with reasonable and nondiscriminatory
14 documentation and administrative claims submission requirements.
15 A franchisor shall not disapprove or chargeback a claim based
16 upon an extrapolation from a sample of claims, unless the sample
17 of claims is selected randomly and the extrapolation is performed
18 in a reasonable and statistically valid manner.

19 (3) If the franchisor disapproves of a previously approved claim
20 following an audit, the franchisor shall provide to the franchisee,
21 within 30 days after the audit, a written disapproval notice stating
22 the specific grounds upon which the claim is disapproved. The
23 franchisor shall provide a reasonable appeal process allowing the
24 franchisee a reasonable period of not less than 30 days after receipt
25 of the written disapproval notice to respond to any disapproval
26 with additional supporting documentation or information rebutting
27 the disapproval and to cure noncompliance, with the period to be
28 commensurate with the volume of claims under consideration. If
29 the franchisee rebuts any disapproval and cures any material
30 noncompliance relating to a claim before the applicable deadline,
31 the franchisor shall not chargeback the franchisee for that claim.

32 (4) If the franchisee provides additional supporting
33 documentation or information purporting to rebut the disapproval,
34 attempts to cure noncompliance relating to the claim, or otherwise
35 appeals denial of the claim and the franchisor continues to deny
36 the claim, the franchisor shall provide the franchisee with a written
37 notification of the final denial within 30 days of completion of the
38 appeal process, which shall conspicuously state "Final Denial" on
39 the first page.

1 (5) The franchisor shall not chargeback the franchisee until 45
2 days after receipt of the written notice described in paragraph (3)
3 or paragraph (4), whichever is later. Any chargeback to a franchisee
4 for warranty parts or service compensation shall be made within
5 90 days of receipt of that written notice. If the franchisee files a
6 protest pursuant to this subdivision prior to the franchisor's
7 chargeback for denied claims, the franchisor shall not offset or
8 otherwise undertake to collect the chargeback until the board issues
9 a final order on the protest. If the board sustains the chargeback
10 or the protest is dismissed, the franchisor shall have 90 days
11 following issuance of the final order or the dismissal to make the
12 chargeback, unless otherwise provided in a settlement agreement.

13 (6) Within six months after either receipt of the written
14 disapproval notice or completion of the franchisor's appeal process,
15 whichever is later, a franchisee may file a protest with the board
16 for determination of whether the franchisor complied with this
17 subdivision. In any protest pursuant to this subdivision, the
18 franchisor shall have the burden of proof.

19 (f) If a false claim was submitted by a franchisee with the intent
20 to defraud the franchisor, a longer period for audit and any resulting
21 chargeback may be permitted if the franchisor obtains an order
22 from the board.

23 (g) For purposes of this section, "warranty" includes a recall
24 conducted pursuant to Sections 30118 to 30120, inclusive, of Title
25 49 of the United States Code. This subdivision is declaratory and
26 not amendatory of existing law.

27 SEC. 3. Section 11705 of the Vehicle Code is amended to read:

28 11705. (a) The department, after notice and hearing, may
29 suspend or revoke the license issued to a dealer, transporter,
30 manufacturer, manufacturer branch, remanufacturer,
31 remanufacturer branch, distributor, or distributor branch upon
32 determining that the person to whom the license was issued is not
33 lawfully entitled thereto, or has done any of the following:

34 (1) Filed an application for the license using a false or fictitious
35 name not registered with the proper authorities, or knowingly made
36 a false statement or knowingly concealed a material fact, in the
37 application for the license.

38 (2) Made, or knowingly or negligently permitted, an illegal use
39 of the special plates issued to the licensee.

- 1 (3) Used a false or fictitious name, knowingly made a false
2 statement, or knowingly concealed a material fact, in an application
3 for the registration of a vehicle, or otherwise committed a fraud
4 in the application.
- 5 (4) Failed to deliver to a transferee lawfully entitled thereto a
6 properly endorsed certificate of ownership.
- 7 (5) Knowingly purchased, sold, or otherwise acquired or
8 disposed of a stolen motor vehicle.
- 9 (6) Failed to provide and maintain a clear physical division
10 between the type of business licensed pursuant to this chapter and
11 any other type of business conducted at the established place of
12 business.
- 13 (7) Willfully violated Section 3064, 3065, 3074, or 3075 or any
14 rule or regulation adopted pursuant thereto.
- 15 (8) Violated any provision of Division 3 (commencing with
16 Section 4000) or any rule or regulation adopted pursuant thereto,
17 or subdivision (a) of Section 38200.
- 18 (9) Violated any provision of Division 4 (commencing with
19 Section 10500) or any rule or regulation adopted pursuant thereto.
- 20 (10) Violated any provision of Article 1 (commencing with
21 Section 11700) of, or Article 1.1 (commencing with Section 11750)
22 of, Chapter 4 of Division 5 or any rule or regulation adopted
23 pursuant thereto.
- 24 (11) Violated any provision of Part 5 (commencing with Section
25 10701) of Division 2 of the Revenue and Taxation Code or any
26 rule or regulation adopted pursuant thereto.
- 27 (12) Violated any provision of Chapter 2b (commencing with
28 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code
29 or any rule or regulation adopted pursuant thereto.
- 30 (13) Submitted a check, draft, or money order to the department
31 for any obligation or fee due the state which was dishonored or
32 refused payment upon presentation.
- 33 (14) (A) Has caused any person to suffer any loss or damage
34 by reason of any fraud or deceit practiced on that person or
35 fraudulent representations made to that person in the course of the
36 licensed activity.
- 37 (B) For purposes of this paragraph, “fraud” includes any act or
38 omission which is included within the definition of either “actual
39 fraud” or “constructive fraud” as defined in Sections 1572 and
40 1573 of the Civil Code, and “deceit” has the same meaning as

1 defined in Section 1710 of the Civil Code. In addition, “fraud”
2 and “deceit” include, but are not limited to, a misrepresentation in
3 any manner, whether intentionally false or due to gross negligence,
4 of a material fact; a promise or representation not made honestly
5 and in good faith; an intentional failure to disclose a material fact;
6 and any act within Section 484 of the Penal Code.

7 (C) For purposes of this paragraph, “person” also includes a
8 governmental entity.

9 (15) Failed to meet the terms and conditions of an agreement
10 entered into pursuant to Section 11707.

11 (16) Violated Section 43151, 43152, or 43153 of, or subdivision
12 (b) of Section 44072.10 of, the Health and Safety Code.

13 (17) Failed to repay a claim paid by the Consumer Motor
14 Vehicle Recovery Corporation as provided in subdivision (i) of
15 Section 11703.

16 (18) As a buy-here-pay-here dealer, violated any provision of
17 Chapter 11 (commencing with Section 7500) of Division 3 of the
18 Business and Professions Code or any rule or regulation adopted
19 pursuant to those provisions.

20 (b) Any of the causes specified in this chapter as a cause for
21 refusal to issue a license to a transporter, manufacturer,
22 manufacturer branch, remanufacturer, remanufacturer branch,
23 distributor, distributor branch, or dealer applicant is cause to
24 suspend or revoke a license issued to a transporter, manufacturer,
25 manufacturer branch, remanufacturer, remanufacturer branch,
26 distributor, distributor branch, or dealer.

27 (c) Except as provided in Section 11707, every hearing provided
28 for in this section shall be conducted pursuant to Chapter 5
29 (commencing with Section 11500) of Part 1 of Division 3 of Title
30 2 of the Government Code.

31 SEC. 4. Article 1.1 (commencing with Section 11750) is added
32 to Chapter 4 of Division 5 of the Vehicle Code, to read:

33

34 Article 1.1. Consumer Automotive Recall Safety Act

35

36 11750. This article shall be known, and may be cited, as the
37 Consumer Automotive Recall Safety Act (CARS Act).

38 11752. As used in this article, the following definitions apply:

39 (a) The term “dealer” has the same meaning as in Section 285.

1 (b) (1) A “manufacturer’s recall” is a recall conducted pursuant
2 to Sections 30118 to 30120, inclusive, of Title 49 of the United
3 States Code.

4 (2) A manufacturer’s recall does not include a service campaign
5 or emission recall when the vehicle manufacturer or the National
6 Highway Traffic Safety Administration has not issued a recall
7 notice to owners of affected vehicles, pursuant to Section 30118
8 of Title 49 of the United States Code.

9 (c) A “recall database” is a database from which an individual
10 may obtain vehicle identification number (VIN) specific
11 manufacturer’s recall information relevant to a specific vehicle.

12 (1) For a vehicle manufacturer that is not subject to the
13 regulations adopted pursuant to Section 31301 of the federal
14 Moving Ahead for Progress in the 21st Century Act (Public Law
15 112-141), a recall database is one of the following:

16 (A) The recall data on a vehicle manufacturer’s Internet Web
17 site for a specific vehicle’s line-make.

18 (B) The recall data in a vehicle manufacturer’s internal system
19 that provides information to its franchisees on vehicles subject to
20 recall.

21 (C) The recall data in subparagraph (A) or (B) that is contained
22 in a commercially available vehicle history system.

23 (2) For a vehicle manufacturer that is subject to the regulations
24 adopted pursuant to Section 31301 of the federal Moving Ahead
25 for Progress in the 21st Century Act (Public Law 112-141), a recall
26 database shall include, at a minimum, the recall information
27 required pursuant to Section 573.15 of Title 49 of the Code of
28 Federal Regulations.

29 (d) A “recall database report” is a report, specific to a vehicle
30 that is identified by its VIN, containing information obtained from
31 a recall database.

32 (e) A “rental car company” is a person or entity in the business
33 of renting passenger vehicles to the public in California.

34 11754. (a) No later than 48 hours after receiving a notice of a
35 manufacturer’s recall, or sooner if practicable, a dealer or rental
36 car company with a motor vehicle fleet of 34 or fewer loaner or
37 rental vehicles shall not loan, rent, or offer for loan or rent a vehicle
38 subject to that recall until the recall repair has been made.

39 (b) If a recall notification indicates that the remedy for the recall
40 is not immediately available and specifies actions to temporarily

1 repair the vehicle in a manner to eliminate the safety risk that
2 prompted the recall, the dealer or rental car company, after having
3 the repairs completed, may loan or rent the vehicle. Once the
4 remedy for the vehicle becomes available to the dealer or rental
5 car company, the dealer or rental car company shall not loan or
6 rent the vehicle until the vehicle has been repaired.

7 ~~11758. (a) Before mailing a notice of registration renewal to~~
8 ~~the registered owner of a vehicle, pursuant to Section 1661, the~~
9 ~~department shall obtain a recall database report for that vehicle.~~
10 ~~If the recall database report indicates that the vehicle is subject to~~
11 ~~a manufacturer's recall, the department shall notify the registered~~
12 ~~owner by checking the box next to the recall disclosure statement~~
13 ~~specified in subdivision (b).~~

14 ~~(b)~~

15 ~~11758. The department shall include the following recall~~
16 ~~disclosure statement on the notice of registration renewal for a~~
17 ~~vehicle subject to a manufacturer's recall: *each vehicle registration*~~
18 ~~*renewal notice:*~~

19 ~~"WARNING. This vehicle has an unrepaired manufacturer's~~
20 ~~safety recall.~~

21 ~~"NOTICE: Many vehicles have been recalled recently for~~
22 ~~needed repairs. Did you know you can check to see if your vehicle~~
23 ~~has an unrepaired manufacturer's safety recall? For most vehicles,~~
24 ~~you can get this recall manufacturer safety recalls are repaired for~~
25 ~~free. You can check for any recalls and how to get the recall~~
26 ~~repaired at www.safercar.gov."~~

27

28 ~~(e) This section shall become operative on the date that the~~
29 ~~Director of Motor Vehicles executes a declaration, to be retained~~
30 ~~by the director, in which the director certifies that the department~~
31 ~~has appropriate access to the necessary data within a recall database~~
32 ~~and available funding to include a recall disclosure statement on~~
33 ~~the notice of registration renewal for a vehicle subject to a~~
34 ~~manufacturer's recall. The director shall post the declaration on~~
35 ~~the department's Internet Web site and shall send the declaration~~
36 ~~to the appropriate committees of the Legislature and to the~~
37 ~~Legislative Counsel.~~

38 ~~11760. This article shall not create any legal duty upon the~~
39 ~~dealer, rental car company, or department related to the accuracy,~~
40 ~~errors, or omissions contained in a recall database report or any~~

1 legal duty to provide information added to a recall database after
2 the dealer, rental car company, or department obtained the recall
3 database report pursuant to Sections 11754 and 11758.

4 11761. The rights and remedies provided by this article are
5 cumulative and shall not be construed as restricting any right or
6 remedy that is otherwise available.

7 11762. The provisions of this article are severable. If any
8 provision of this article or its application is held invalid, that
9 invalidity shall not affect other provisions or applications that can
10 be given effect without the invalid provision or application.

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

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