

REPORT OF THE

**VIRGINIA COMMISSIONERS
TO THE NATIONAL CONFERENCE
OF COMMISSIONERS ON
UNIFORM STATE LAWS**

**TO THE GOVERNOR
AND THE GENERAL ASSEMBLY OF VIRGINIA**



REPORT DOCUMENT NO. 376

**COMMONWEALTH OF VIRGINIA
RICHMOND
2014**

TABLE OF CONTENTS

HISTORY OF THE CONFERENCE	1
OPERATION OF THE CONFERENCE	2
VALUE FOR VIRGINIA AND THE STATES	3
STATE APPROPRIATIONS	4
OTHER FINANCIAL CONTRIBUTORS	4
PROCESS FOR CREATION OF UNIFORM AND MODEL ACTS.....	5
THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION.....	6
ACTIVITIES OF THE VIRGINIA COMMISSIONERS.....	6
ACTIVITIES OF THE 2013 VIRGINIA GENERAL ASSEMBLY.....	7
Uniform Law-Related Bills Passed by the 2013 General Assembly Session and Signed by the Governor	7
REPORT OF PROCEEDINGS OF THE 2013 ANNUAL MEETING.....	9
2013 ADOPTIONS BY CONFERENCE	10
SUMMARIES.....	10
Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Pertaining to International Proceedings	10
Uniform Powers of Appointment Act	10
Uniform Act on Prevention of and Remedies for Human Trafficking	11
2013 Amendments to the Uniform Harmonized Business Organization Act	11
RECOMMENDATIONS FOR ENACTMENT	11
CURRENT DRAFTING PROJECTS	12
REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS.....	13

Up to date information is available on the website of the National
Conference of Commissioners on Uniform State Laws
www.uniformlaws.org/

**Report of the
Virginia Commissioners to the
National Conference of Commissioners
on Uniform State Laws
to
The Governor and the General Assembly of Virginia
Richmond, Virginia**

January 1, 2013 - December 31, 2013

HISTORY OF THE CONFERENCE

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. The following year the New York legislature authorized the appointment of commissioners

. . . to examine certain subjects of national importance that seem to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity of the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.

In the same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states regarding legislation on certain issues. In August of 1892, the first National Conference of Commissioners on Uniform State Laws (Conference or NCCUSL) convened in Saratoga Springs, New York.

By 1912, every state was participating in the Conference. Since then, the Conference has steadily increased its contribution to state law and has attracted some of the most outstanding members of the legal profession. Prior to his more notable political prominence and service as president of the United States, Woodrow Wilson became a member in 1901. Former Supreme Court Justices Brandeis, Souter, and Rutledge, and former Chief Justice Rehnquist, and such legal scholars as Professors Wigmore, Williston, Pound, and Bogart have all served as members of the Conference. This distinguished body has guaranteed

that the products of the Conference are of the highest quality and are enormously influential upon the process of the law.

The Conference, also known as the Uniform Law Commission (ULC), began more than 100 years ago because of the interests of state governments in improvement of the law and interstate relationships. Its purposes remain to serve state governments and improve state law.

OPERATION OF THE CONFERENCE

The ULC convenes as a body once a year. Throughout the year drafting committees, composed of commissioners, work over several weekends on drafts of legislation to be considered at the annual meeting. The work of the drafting committees is read, line-by-line, and thoroughly debated at the annual meeting. Each act must be considered over a number of years; most are read and debated by the Conference two or more times. Those acts deemed by the ULC to be ready for consideration in the state legislatures are put to a vote of the states. Each state caucuses and votes as a unit.

The governing body of the ULC, the Executive Committee, is composed of officers elected by vote of the commissioners, ex-officio members, and members who are appointed annually by the president of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the Conference to the state legislatures.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts. Other organizations are frequently contacted and advised of Conference activities as interests and activities necessitate.

At the national office in Chicago, a small staff provides administrative and clerical assistance to the ULC and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts. The ULC contracts with "reporters" for professional services to aid in drafting. Reporters are engaged at modest honoraria to work with drafting committees on specific acts. The annual budget and audit report of the Conference are available on request.

The work of the ULC strengthens the state and federal system of government. In many areas of the law, the states must solve problems through cooperative action or the issues are likely to be preempted by Congress. The ULC pursues solutions to problems on a cooperative basis by the states. Without the ULC, more legislative activities would undoubtedly shift from the state capitals to Washington, D.C.

VALUE FOR VIRGINIA AND THE STATES

The process of drafting a uniform act is lengthy and deliberate. A committee is appointed from the membership of the ULC. The American Bar Association is invited to appoint an advisor to each drafting committee. The bylaws of the ULC require at least two years for drafting and two readings of the draft at annual meetings of the ULC.

Uniform Law Commissioners donate their professional services, spending hundreds of hours on uniform state laws as a public service because of their commitment to good law. The cumulative value of this donated time in the development of uniform and model acts averages between \$1 and \$2 million per project.

The average revision of an article of the Uniform Commercial Code takes four years, with three to five committee meetings per year. The original Uniform Probate Code took a full decade to develop and promulgate. Each of these comprehensive projects cost much more than the actual budget of the ULC, and represents much larger contributions--in terms of time--from the ULC membership.

Major committees of the ULC draw extensive advisory and observer groups into the drafting process. Meetings of the Uniform Commercial Code committees regularly draw advisors and observers in a ratio of two or three to one commissioner. These advisor and observer groups represent various interests, provide outside expertise, and facilitate dissemination of the act. It is impossible to place a dollar value on their input, which state funds do not pay.

It is also not possible to measure the worth of the intellectual participation by all who are involved. There is no process at either the state or federal level of the United States government today that compares to the uniform law process--intense, nonpartisan scrutiny of both policy and execution of the law.

STATE APPROPRIATIONS

The ULC is a state service organization that depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the ULC. In addition, each state delegation requests an amount to cover its commissioners' travel expenses for the Conference's annual meeting. The total requested contribution of all the states to the operation of the ULC is \$2,611,800 in fiscal year 2014. The smallest state contribution is \$27,700 and the largest is \$154,500. Virginia's dues for FY 2014 are \$55,000. The annual budget of the ULC for FY 2014 is \$3,514,604. Of this amount, \$764,140 goes directly to drafting uniform and model acts, and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$167,190. In addition, \$684,341 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$437,084 is spent on the annual meeting. Public education for uniform and model acts costs about \$167,058 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

OTHER FINANCIAL CONTRIBUTORS

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). The ALI holds Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of ULC and ALI costs are paid from the Falk Foundation income.

In addition, the Commission has established royalty agreements with major legal publishers, which reprint the ULC's uniform and model acts in their publications.

The Conference will not take money from any source except on the understanding that its drafting work is completely autonomous.

PROCESS FOR CREATION OF UNIFORM AND MODEL ACTS

The procedures for drafting an act are the result of long experience with the creation of legislation. The Scope and Program Committee, which consists solely of commissioners, considers new subject areas of state law for potential uniform or model acts. The Committee reviews suggestions for uniform or model acts from many sources, including organized bar groups, state governments, and private persons. If a subject area cannot be adequately studied by Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. The recommendations of the Scope and Program Committee go to the ULC Executive Committee.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

Advisors and participating observers are solicited to assist the drafting committee. The American Bar Association appoints official advisors for every committee. Participating observers may come from state government or organizations with interest and expertise in a subject, and from the ranks of recognized experts in a subject. Advisors and participating observers are invited to work with drafting committees and to contribute comments. They do not make final decisions with respect to the final contents of an act. Only the commissioners who compose the drafting committee may do this.

A committee meets according to the needs of the project. A short act may require one or two committee meetings. Major acts may require many more meetings for a considerable period of time, several years, in some instances. A committee may produce a number of successive drafts as an act evolves.

At each annual meeting during its working life, the drafting committee must present its work to the whole body of the ULC. The most current draft is read and debated. This scrutiny continues from annual meeting to annual meeting until a draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting, and a final reading at a subsequent annual meeting. There is often more than one interim reading and a drafting process that exceeds two years in duration. An act becomes official by a majority vote of the states (one vote to each state). The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

The cost of this process to the states is in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor.

THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION

Virginia's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Virginia benefits from the excellent body of law created for its consideration. The Conference, and all the states, benefit from having Virginia's direct contribution to the work of ULC.

ACTIVITIES OF THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members, each to serve a four-year term (§ 30-196, Code of Virginia). Thomas Edmonds of Richmond is a gubernatorial appointee.

In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. Virginia's life members are Ellen F. Dyke, of Vienna, H. Lane Kneedler, of Charlottesville, Brockenbrough Lamb, Jr., of Richmond, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria.

The Constitution of the Conference also grants membership as an associate member to the principal administrative officer of the state agency "charged by law with the duty of drafting legislation," or his designee. Robert L. Tavenner, who became Director of the Division of Legislative Services in July 2011, became a member at that time. Jessica D. French, senior attorney with the Division, has been designated an associate member.

The Virginia Commissioners have served on the following committees during the past year:

Ellen F. Dyke — Member, Drafting Committee on Appointment and Powers of Real Estate Receivers.

Thomas Edmonds — Member, Committee on Liaison with the American Bar Association; and Member, Drafting Committee on Appointment and Powers of Real Estate Receivers.

Jessica D. French — Vice-chair, Committee of Legislative Attorneys; Member, Standby Committee on Collateral Consequences of Conviction Act; and Member, Study Committee on Third Party Child Custody and Visitation Act.

H. Lane Kneedler — Member, Legislative Council (Atlantic Region); Member, Standby Committee on State Administrative Procedure Act; Member, Drafting Committee on Prevention of and Remedies for Human Trafficking; Member, Standby Committee on Collateral Consequences of Conviction Act; Member, Committee on Federalism and State Law; and Reporter, Study Committee on Firearms Information.

Esson McKenzie Miller, Jr. — Chair, Standby Committee on Uniform Certificate of Title for Vessels Act; Member, Committee of Legislative Attorneys; Member, Drafting Committee on Prevention of and Remedies for Human Trafficking; and Member, Study Committee on Firearms Information.

Carlyle C. Ring, Jr. — Chair, Committee on Uniform Commercial Code; Chair, Executive Subcommittee of the Permanent Editorial Board for Uniform Commercial Code; Member, Permanent Editorial Board for Uniform Commercial Code; Member, Committee on Federalism and State Law; Liaison Member, Uniform Law Foundation Trustees; and Member, Drafting Committee on Home Foreclosure Procedures Act.

Robert L. Tavenner — Observer, Study Committee on Firearms Information; and Observer, Study Committee on Criminal Records Accuracy and Access.

ACTIVITIES OF THE 2013 VIRGINIA GENERAL ASSEMBLY

Based on recommendations made by the Virginia Commissioners in Report Document No. 117, 2013, covering the period January 1, 2012, through December 31, 2012, and other initiatives, the following actions regarding uniform laws were taken by the 2013 Virginia General Assembly.

Uniform Law-Related Bills Passed by the 2013 General Assembly Session and Signed by the Governor

Amendments to Article 9 (Secured Transactions) of the UCC

HB 2102; Delegate Cline. Uniform Commercial Code - Secured Transactions; filings. Provides that a filing under Article 8.9A of the Uniform

Commercial Code does not occur with respect to an initial financing statement or amendment thereto that the State Corporation Commission refuses to file on grounds that such a record is not created pursuant to Article 8.9A, is materially false or fraudulent, is presented for an improper purpose, or indicates that the debtor and secured party are substantially the same person or that the record was transmitted by an individual debtor. If a record should have been rejected for any of these reasons, the record shall be deemed void and ineffective and the filing office may remove it from the index. Other changes conform terminology regarding persons falsely identified in a financing statement filed with the office of the clerk of the Commission.

Uniform Trust Code

SB 758; Senator Edwards. Uniform Trust Code; interested trustees subject to ascertainable standard. Expands the rule in the Uniform Trust Code that subjects an interested trustee to an ascertainable standard to include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee or because a reciprocal trust or power doctrine applies.

Amendments to Article 4A (Funds Transfers) of the UCC

SB 1066; Senator Edwards. Uniform Commercial Code; Funds Transfers. Amends Article 4A of the Uniform Commercial Code to ensure that 4A continues to apply to remittance transfers that are not electronic fund transfers. Under current law, Article 4A of the Uniform Commercial Code, which is Title 4A in Virginia, applies to remittance transfers that are not electronic funds transfers under the federal Electronic Fund Transfer Act (EFTA). The Dodd-Frank Wall Street Reform and Consumer Protection Act amended EFTA to provide that EFTA will govern remittance transfers whether or not they are electronic, which means that when its provisions go into effect a fund transfer initiated by a remittance transfer would be outside of the coverage of 4A, even if the transfer is not an electronic fund transfer.

Uniform Real Property Transfer on Death Act

SB 1093; Senator Hanger. Uniform Real Property Transfer on Death Act; adoption. Codifies the Uniform Real Property Transfer on Death Act, which authorizes the creation of a transfer on death deed, which, when properly executed and recorded, passes title directly to named beneficiaries without probate upon the transferor's death. The uniform act was approved by the National Conference of Commissioners on Uniform State Laws in 2009. The bill contains technical amendments.

Virginia Uniform Certificate of Title for Watercraft Act

SB 1117; Senator Wagner. Watercraft titling certificates; adoption of uniform act; penalty. Repeals Virginia's existing watercraft titling law and enacts in its place the Uniform Certificate of Title for Vessels Act as adopted in 2011 by the National Conference of Commissioners on Uniform State Laws. The new act uses the term "watercraft" instead of "vessels" where appropriate to conform to Virginia law. The bill requires the owner of every watercraft of a particular size and type to apply for and obtain a certificate of title, lowering the minimum boat length for which a title is required from 18 feet to 16 feet for boats owned or purchased after July 1, 2014. The bill also details the methods of creation or cancellation of certificates by the Department of Game and Inland Fisheries and describes the contents and effects of a certificate, including the availability of a title brand, a permanent designation indicating that a watercraft's hull has been damaged. The bill applies some of the principles of the Uniform Commercial Code to the realm of watercraft by defining the rights of secured parties and purchasers other than secured parties and providing the method for perfecting a security interest. Finally, the bill also establishes the rules for transferring ownership of a watercraft by a transfer statement or by operation of law, sets out the means of acquiring title to an abandoned watercraft, states the duties of the Department, and provides several general provisions. The bill also makes technical amendments. The bill contains an enactment clause making it effective on July 1, 2014.

REPORT OF PROCEEDINGS OF THE 2013 ANNUAL MEETING

The 2013 annual meeting of the Conference was held July 6 - July 12, in Boston, Massachusetts. Commissioners Dyke, Edmonds, French, Kneedler, Miller, Ring, and Tavenner attended.

The following uniform acts or amendments to uniform acts were approved at the annual meeting:

- *Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings*
- *Uniform Powers of Appointment Act*
- *Uniform Act on Prevention of and Remedies for Human Trafficking*
- *2013 Amendments to the Uniform Harmonized Business Organization Act*

In addition to the approved acts listed above, the following uniform acts or amendments to them, and reports were considered by the Conference at its annual meeting:

- *Home Foreclosure Procedures Act*
- *Fiduciary Access to Digital Assets Act*
- *Revision to the Uniform Residential Landlord and Tenant Act*
- *Interjurisdictional Recognition of Substitute Decision-Making Documents Act*
- *Amendments to the Uniform Fraudulent Transfer Act*

2013 ADOPTIONS BY CONFERENCE

SUMMARIES

Summaries of the acts adopted or amended by the Conference are as follows:

Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Pertaining to International Proceedings

The 2013 Amendments to the UCCJEA were drafted and approved as part of the effort to implement the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. The United States has signed the Convention, and the UCCJEA amendments constitute part of the implementing legislation. Federal legislation (which is not yet enacted) will implement the rest of the Convention. Although the ULC approved the Amendments to UCCJEA Pertaining to International Proceedings in 2013, because federal implementing legislation has not yet been drafted, the ULC does not intend to present the Amendments for state enactment at this time.

Uniform Powers of Appointment Act

A power of appointment is an estate planning tool that permits the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries. It is an effective and flexible technique used in a wide variety of situations, but there is very little statutory law governing the creation and use of powers of appointment. Instead, estate planning attorneys must rely on a patchwork of state court decisions. The drafters of the Uniform Powers of Appointment Act did not set out to change the law, but rather to codify the existing common law, relying heavily on the Restatement (Third) of Property: Wills and other Donative

Transfers. Therefore, estate planning attorneys will already be familiar with the act's provisions, and are likely to welcome the legal certainty that would result from its enactment.

Uniform Act on Prevention of and Remedies for Human Trafficking

The Uniform Act on Prevention of and Remedies for Human Trafficking is a comprehensive new law directed against human trafficking. Human trafficking – a form of modern day slavery – is a global concern that affects the United States on federal, state, and local levels. The federal Trafficking Victims Protection Act of 2000 identifies two primary forms of human trafficking: sex trafficking and labor trafficking. The Uniform Act provides the three components necessary for ending human trafficking: comprehensive criminal provisions; provisions for victim services; and the establishment of a coordinating body to help government and non-government organizations coordinate their human trafficking activities. A comprehensive uniform act will enable federal, state, and local agencies to better identify victims, provide needed services, and facilitate prosecution.

2013 Amendments to the Uniform Harmonized Business Organization Act

The objective of the Uniform Harmonized Business Organization Code (UHBOC) is to harmonize, to the extent possible, the language in the ULC's business entity acts (including the Model Entity Transactions Act, Uniform Partnership Act, Uniform Limited Partnership Act, Uniform Limited Liability Company Act, Uniform Statutory Trust Entity Act, Uniform Limited Cooperative Associations Act, Uniform Unincorporated Nonprofit Association Act, and the Model Registered Agents Act) so that the language in the provisions that are common in one or more of the acts are identical. Amendments to the UHBOC approved in 2013 address some technical corrections which need to be made since the act's promulgation in 2011.

RECOMMENDATIONS FOR ENACTMENT

The following uniform act, which has been approved by the Conference, makes a significant contribution to an important subject. The Virginia Commissioners recommend this act for consideration and adoption by the 2014 General Assembly:

Uniform Foreign-Country Money Judgments Recognition Act. This act is a 2005 revision of the Uniform Foreign-Country Money Judgments Recognition Act of 1962 which Virginia adopted in 1990 (§ 8.01-465.6 et seq.) The original act was proposed to bring uniformity to the method in which the individual states

recognize foreign country judgments and that this uniformity would allay reciprocity concerns of foreign nations and therefore make it more likely that judgments of the states would be recognized in other countries. The 2005 revision seeks to clarify the provisions of the 1962 Act. The most significant changes are the establishment of a burden of proof and a statute of limitations.

CURRENT DRAFTING PROJECTS

There are currently 3 ULC drafting committees working on new and revised uniform acts. In addition, 4 study committees are considering subjects for possible future drafting.

Current Drafting Committees

Drafting Committee to Revise the Uniform Unclaimed Property Act. The ULC first drafted uniform state legislation on unclaimed property in 1954. That act was then substantially revised in 1981 as the Uniform Unclaimed Property Act, which was later revised in 1995. While the UUPA (1995) has been adopted in 16 states, and about 40 states have enacted a version of one of the Uniform Acts, there have been few recent adoptions and various states in recent years have adopted revisions to their unclaimed property acts that are not consistent with the Uniform Act. There have also been many technological developments in recent years that are not addressed in the current Uniform Act, as well as new types of potential unclaimed property, such as gift cards. This Committee will draft a revision of the Uniform Unclaimed Property Act in light of those developments.

Drafting Committee on a Wage Garnishment Act. For a lot of companies, even relatively small businesses if they operate in more than one state, payroll is handled centrally rather than in individual offices. Wage garnishments, however, are governed by widely varying law in all of the states, and this creates difficulties and inefficiencies in complying with wage garnishment orders. This Committee will draft an act on wage garnishment.

Drafting Committee on a Model Tribal Probate Code. Federal legislation – the American Indian Probate Reform Act (AIPRA) – provides very limited legislation concerning probate issues in Indian Country; there are many probate law issues that are addressed in the Uniform Probate Code and existing law in most states as to which AIPRA is either silent or incomplete. This Committee will collaborate with representatives of Tribal governments and others from Indian Country to draft a Model Tribal Probate Code that would supplement and “wrap around” AIPRA so as to be consistent with AIPRA and also better fulfill the purposes of both AIPRA and the Indian Land Consolidation Act.

Study Committees

Joint Study Committee on Harmonization of the Law of Canada,
Caribbean Nations, and the United States Concerning Registration of
Foreign Judgments

Joint Study Committee on Harmonization of the Law of Caribbean Nations
and the United States Concerning Enforcement of Child Custody and
Child Support Orders

Study Committee on Out-of-State Unsworn Declarations

Study Committee on Social Media Privacy

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General, the organized bar, state governmental entities, private interest groups and private citizens on ideas for new uniform or model acts. Appropriate topics are those where (i) uniformity in the law among the states will produce significant benefits to the public and (ii) it is anticipated that a majority of the states would adopt such an act.

Respectfully submitted,

Carlyle C. Ring, Jr., Chairman

Ellen F. Dyke

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