

CHAPTER 17.

TOBACCO CONTROL

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An Act to regulate the manufacture, labeling, promotion, distribution and use of tobacco products.

Commencement: December 5, 2006
Source P.L. 2006-68

PART I - PRELIMINARY**§1701. Short Title.**

This Act may be cited as the Republic of the Marshall Islands Tobacco Control Act, 2006.

§1702. Definitions.

In this Act, unless the context otherwise requires:

(a) **“appeal”** refers to the ability of a product to provide physical or psychological pleasure, satisfaction, or other positive quality to the consumer;

(b) **“brand element”** includes the brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable color or pattern or colors, or any other indicia of product

identification identical or similar to, or identifiable with those used for any brand of tobacco product;

(c) “**character**” refers to the distinctive qualities of a tobacco product;

(d) “**composition**” refers to the content, arrangement or combination of substances included in the processing and manufacture of tobacco products;

(e) “**distribute**” means to sell, offer to sell, expose for sale, give, supply exchange, convey, consign, deliver, furnish, or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise being lighted;

(f) “**emission**” means any substance or combination of substances that is produced as a result of a tobacco being lighted;

(g) “**inspector**” means a person or class of persons designated as an inspector under section 1710(1);

(h) “**manufacturer**” includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;

(i) “**Minister**” means the Minister of Health or his or her designate;

(j) “**Ministry**” means the Ministry of Health;

(k) “**package**” means the container, receptacle or wrapper in which a tobacco product is sold or displayed at retail, including a carton that contains smaller packages;

(l) “**promotion**” means the practice of fostering awareness of and positive attitudes toward a product, brand or manufacturer for the purpose of selling the product or encouraging tobacco use, through various means including direct advertisement, discounts, incentives, rebates, free distribution, promotion of brand elements through related events and products through a public medium of communication;

(m) “**Tobacco Control Account**” means the bank account established under section 1712(1) and administered by the Secretary of the Ministry of Health and the Secretary of the Ministry of Finance;

(n) “**Secretary**” means the Secretary of Health or his or her designate;

(o) “**tobacco product**” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters;

(p) “**toxicity**” refers to the quality, relative degree or specific degree of being toxic or poisonous;

(q) “**vending machine**” means any means of distribution of tobacco products that is not mediated by a human being;

(r) “**child**” means a person under 18 years old.

§1703. Purpose.

The purpose of this Act is to reduce tobacco use and its consequent harm by:

(a) protecting children and other nonsmokers from inducements to use tobacco;

(b) protecting nonsmokers from exposure to tobacco smoke;

(c) ensuring that the population is adequately informed about the risks of tobacco

use and exposure to second hand tobacco smoke and about the benefits of quitting smoking;

(d) promoting a climate where nonsmoking and the absence of tobacco promotion is the norm.

PART II – GENERAL REQUIREMENTS

§1704. Product regulation.

(1) No person shall **manufacture**, sell, or import a tobacco product except in compliance with this Act and any regulations made under this Act.

(2) Every manufacturer and importer of a tobacco product shall provide the Secretary, in the prescribed manner and within the prescribed time, information about the product and its emissions as required by Regulations promulgated under this Act.

(3) No person shall sell, offer for sale, distribute, advertise or promote any brand of tobacco products that was not sold, distributed, advertised or promoted in the country at least one year before the effective date of this Act.

(4) The Minister may make regulations:

(a) establishing standards for the manufacture of tobacco products, including:

(i) prescribing the amount of substances that may be contained in the product or its emission;

(ii) prescribing substances that may not be added to tobacco products;

(iii) prescribing product design standards to reduce the harmful effects of tobacco products and to reduce their appeal to youth; and

(b) prescribing test methods, including methods to assess conformity with the standards;

(c) prescribing information that manufacturers must provide to the Minister and or the public about tobacco products and their emission, including sales data and information on product composition, ingredients, hazardous properties and brand elements; and

(d) generally as needed to carry out this part of the Act.

PART III – PACKAGING AND LABELING

§1705. Requirements for packaging and labeling.

(1) No person shall manufacture, sell, or import a tobacco product unless the package containing it displays, in the prescribed form and manner, information required by the regulations concerning:

(a) the product and its emissions;

(b) health hazards and effects arising from the use of the product or from its emissions;

(c) health related messages, including advice on how to quit smoking;

(d) markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products for which tax has not been paid.

(2) No person shall package tobacco in a manner that allows a consumer or purchase of tobacco products to be deceived or misled concerning its character, properties, toxicity, composition, merit or safety.

(3) Requirements under subsections (1) and (2) do not relieve a manufacturer or retailer of other obligations or liabilities arising from other applicable legal norms to warn consumers of the risks of using tobacco products.

(4) The Minister may make regulations on:

(a) the content and format of information that must appear on packages and in leaflets pursuant to section 1709;

(b) information that may not appear on packages; and

(c) generally as needed to carry out this part of the Act.

PART IV – ADVERTISING AND PROMOTION

§1706. Requirements for advertising and promotion.

(1) No person shall promote or cause to promote by any other person, a tobacco product or a tobacco product-related brand element, except as prescribed by the Act or regulations.

(2) Notwithstanding regulations made under this Act, no person shall promote or cause to promote tobacco products or brand elements:

(a) in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning its character, properties, toxicity, composition, merit or safety;

(b) that does not display, in the prescribed form and manner, the information required by regulations about the product and its emissions, health hazards and effects arising from the use of the product or from its emissions, and other health-related messages such as advice on how to quit smoking;

(c) through means of promotion that can be viewed from outdoors.

(d) utilizing any item other than a tobacco product, or a physical establishment or vehicle of any kind, which bears the brand name (alone or in conjunction with any other word), trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling messages, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product;

(e) utilizing any athletic, musical, artistic or any other social or cultural event, or any entry or team in any event, in the brand name (alone or in conjunction with any other word), trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product.

(3) Nothing in subsection 2(e) of this section shall prevent a person from sponsoring or causing to be sponsored any athletic, musical, artistic or any other social or cultural event, or any entry or team in any event, in the name of a corporation which manufactures a tobacco product, provided that both the corporate name and the corporation were registered and in use in this

country prior to **31 January 2006** and that the corporate name does not include any brand name (alone or in conjunction with any other word), trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product.

(4) Nothing in this section shall apply to the publication by a manufacturer of a tobacco product advertisement in a printed publication that is intended for distribution only to employees of the tobacco trade for trade purposes.

(5) No person shall offer or provide any consideration, direct or indirect, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest, or distribute a tobacco product without monetary consideration, or in consideration of the purchase of a product or service or the performance of a service.

(6) The Minister may make regulations:

(a) prescribing the form and manner of any health messages to be required on promotional material or representations by any means;

(b) prescribing the format, content and placement of any tobacco promotion;

(c) requiring tobacco manufacturers to report the amount of monetary expenditures on tobacco promotion by brand and by type of media and prescribing the format and frequency of reporting;

(d) prescribing schedules for the implementation of promotional restrictions;

(e) generally as needed to carry out this part of the Act.

PART V - DISTRIBUTION

§1707. Prohibitions in relation to distribution of tobacco.

(1) No person shall sell or offer to sell tobacco to a child.

(2) It shall not be a defense to the above-mentioned clause that the person appeared to be 18 years old or older.

(3) It shall be a defense to subsection (1) that the purchaser presented a prescribed form of identification showing his or her age and that there was no apparent reason to doubt the authenticity of the document or that it was issued to the person producing it.

(4) Nothing in this section prevents a person from giving tobacco or a tobacco related product to a young person if the gift is made solely for use in traditional, spiritual or cultural practices or ceremonies.

(5) No person shall sell or offer to sell tobacco products except in a package containing the quantities or number of units prescribed by regulation.

(6) No person shall sell or offer to sell tobacco products in a place other than those prescribed by regulations.

(7) Notwithstanding any regulation made under this Act, no person shall sell or offer to sell tobacco products in the following places:

(a) health institutions, including hospitals, pharmacies, and health clinics;

(b) educational institutions, including primary, secondary, and post secondary schools;

(c) facilities with a significant portion of youth clientele, including parks, movie theaters and sports facilities; and

(d) such other places as may be prescribed by regulations.

(8) No person shall sell or offer to sell a tobacco product unless it is hidden from view of the general public at point of sale.

(9) Notwithstanding subsection (8), retailers may post signs indicating that tobacco products are available for sale, the specific products or brands available for sale, and their respective prices, provided that brand elements are not visibly displayed.

(10) No person shall sell or offer to sell tobacco products:

(a) by means of a display that permits a person to handle the tobacco product before paying for it;

(b) through a vending machine;

(c) through the mail or the internet;

(d) at a retail store unless signs bearing health warnings and other information are posted at the place in accordance with the regulations.

(11) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign respecting the legal age to purchase tobacco or tobacco-related products unless the signs is supplied or approved by the Ministry of Health.

(12) The Minister may make regulations:

(a) prescribing acceptable forms of identification under subsection (3);

(b) prescribing quantities of tobacco to be sold in a single package;

(c) prescribing places where tobacco products may be sold;

(d) prescribing required signage at point of sale;

(e) generally as needed to carry out this part of the Act.

PART VI - USE

§1708. Smoking in work place and public areas prohibited.

(1) No person shall smoke tobacco or hold lighted tobacco in enclosed, indoor areas of any private or public work place, or any public place.

(2) For the purpose of this Act, private or public work places and public places include inter alia the following:

(a) offices and office buildings including public areas, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, stairwells, restrooms, laundry rooms and individual offices;

(b) factories;

(c) health institutions;

(d) educational institutions of all levels;

(e) any premises in which children are cared for a fee;

(f) any means of transportation used for commercial, public or professional purposed and used by more than one person;

(g) public transportation terminals;

(h) retail establishments including shopping malls;

- (i) cinemas;
- (j) church halls;
- (k) sports facilities;
- (l) bars and restaurants;
- (m) pool halls;
- (n) publicly owned facilities rented out for events;
- (o) any other facilities accessible to the public; and
- (p) any other facilities that employ paid personnel.

(3) All private and public workplaces and public places shall post signs, in accordance with regulations, that clearly indicate that the establishment is smoke free.

(4) The Minister may make regulations:

- (a) prescribing the location, content and format of any signs required to identify smoke free establishments;
- (b) generally as needed to carry out this part of the Act.

PART VII – MEASURES TO COMBAT SMUGGLING

§1709. Requirements for export.

(1) No tobacco product shall be exported from the Republic of the Marshall Islands without the posting by the manufacturer or exporter of a bond for shipment with the Ministry of Finance in the manner and an amount to be prescribed by regulations and containing the following information and documents, as applicable:

- (a) the name, license number, address, telephone, fax numbers and e-mail of the manufacturer, including the country of manufacturer;
- (b) the name, license number, address, telephone, fax numbers and e-mail of the exporter, including the country of export;
- (c) the name, license number, address, telephone, and fax numbers and e-mail of the importer or purchaser, and any person who receives the shipment of the importer or purchaser's behalf;
- (d) the name, address, telephone, and fax numbers of the intended carrier(s) of the shipment and the means of transport;
- (e) the names of the cities and countries through which the shipment will be transported;
- (f) identification of the country of final destination;
- (g) the name, license number, address, telephone, and fax numbers of any distributors and other intermediaries handling the shipment;
- (h) the date of the shipment, the period of time over which the shipment is to be in transit, the date of expected arrival in the country of final destination, and the itinerary correlated with dates of entry and exit for each point of entry and exit;
- (i) physical description of the products shipped, including lot, batch or serial numbers of all products contained in the shipment;
- (j) number of individual packages, number of sticks in each package or gram amount, as applicable, number of bulk packages, number of individual packages contained in each bulk package, and the weight of each bulk package contained in the

shipment;

(k) copies of all purchase orders, invoices, shipping or transport, and transit documents related to the shipment;

(l) a description of any tax stamps or special marking or design features on packages contained to the shipment;

(m) an affidavit of the exporter stating that:

(i) he or she has exhausted all reasonable means to investigate the degree of demand for the products in the country of destination and determined that there is legitimate demand there for the number of products ordered and shipped;

(ii) there is no substantial basis for believing that any person receiving or handling the shipment has been or is involved in illegal commercial activity or that the products will be sold illegally;

(iii) he or she has complied with all labeling and other legal requirements;

(iv) information and documents supplied are true and correct to the best of his or her knowledge.

(2) The bond made pursuant to subsection (1) shall be forfeited unless the manufacturer or exporter, as applicable, provides the Secretary of the Ministry of Health with the following information within 30 calendar days of the date the goods are shipped.

(3) Evidence of the claim of custody and proof that all goods reached their final destination without any product being sold or distributed without the full payment of all applicable duties, including but not limited to:

(a) copies of all bills of lading or other evidence of receipt by all importers and intermediaries;

(b) proof of payment of all applicable duties;

(c) copies of invoices received from any intermediaries handling the shipment;

(d) copies of delivery records;

(e) copies of all payment records;

(f) any other information required by the Minister in implementing regulations.

(4) The Minister may make regulations under this Part to establish requirements to enable the tracking and tracing of tobacco products through the distribution from the manufacturer to the point where all relevant duties and taxes have been paid, for the purpose of assisting law enforcement authorities to detect and investigate illicit manufacture and distribution of tobacco products and identify those responsible for illegal activities under the Act.

(5) Regulations under subsection (4) may include but are not limited to the use of:

(a) overt or covert markings to uniquely identify each individual tobacco product and or any of its packaging;

(b) overt markings to clearly identify the legal intended end-market destination of tobacco products;

© scanning of tobacco products and their packaging or other procedures that identify their origin and passage through the distribution chain; and

(d) any other relevant technology that may emerge.

PART VIII – INSPECTION**§1710. Appointment and powers of inspectors.**

(1) For the purpose of this Act, the Minister in consultation with the Public Service Commission may appoint any person or designate any class of persons to perform the duties of inspector. Responsibilities of an inspector shall be specified in the act of appointment.

(2) Every person authorized as an inspector under subsection (1) may, at any reasonable time, to ascertain compliance with this Act and the regulation under it, enter and inspect any of the following places:

- (a) those places referred to in section 1708(2);
- (b) where tobacco is manufactured, tested, stored, packaged, labeled or sold;
- (c) where layouts and requirements stated in section 1707(9) are to be found;
- (d) where anything used in the manufacture, storage, packing, promotion, sale or testing of tobacco is to be found;
- (e) where information relating to the manufacture, storage, packaging, labeling, promotion, sale or testing of tobacco is to be found.

(3) Authorized inspectors shall have the following powers, which no person shall deny, obstruct, or hinder:

- (a) the power to examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or capable of being used for the manufacture, packaging, labeling, storage, distribution or advertising or promotion (if allowed) of tobacco products;
- (b) the power to examine any operation or process carried out on the premises;
- (c) the power to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the authorized officer reasonably believes might contain information relevant to determining compliance with regulatory requirements;
- (d) the power to interview or question any licensee or other person involved in manufacturing, importing, exporting, transporting, packaging, marketing (if allowed) or distributing tobacco products, any owner of the premises, or any person using the premises, and his or her employees, agents, contractors and workers, all of whom shall cooperate fully and truthfully with any inspection or investigation;
- (e) the power to make samples of tobacco products or components of products anywhere they are found and have them tested;
- (f) the power to stop, search, and detain any aircraft, ship, vehicles or other means of transport or storage in which the authorized officer reasonably believes tobacco products are contained or conveyed and to examine, open, take samples of and have tested any tobacco products or product components found therein; and
- (g) the power to seize and detain, or order the storage without removal or

alteration of any tobacco product the authorized officer reasonably believes does not comply with regulatory requirements, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the premises where the tobacco products are located, written notice of the seizure and detention and the grounds for it. If any tobacco product so seized and detained is determined to meet regulatory requirements, it shall be returned immediately to the premises from which it was seized. If any tobacco product is determined not to meet regulatory requirements, it may be confiscated and destroyed or subject to other disposal, as ordered by the adjudicator of the case.

(4) An inspector entering a place to inspect it under this section must, on request, provide the operator of the place with proof of identity and produce a certificate or appointment signed by the Minister, or by a person designated in accordance with regulations.

(5) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a search warrant issued in accordance with applicable laws of the Republic.

(6) No person shall hinder in any way the performance of the duties of an inspector or analyst, mislead them by concealment or false statements, or refuse to provide them with any information or document to which they are entitled under this Act, or destroy any such information or document.

(7) During an inspection under this Act, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.

PART IX – ENFORCEMENT

§1711. Offences and penalties.

(1) Any person found guilty of violating any provision under section 1704 of this Act shall be liable for a fine of:

(a) in the case of an individual, not less than \$500 and not more than \$5,000 for the first offence, and of not less than \$1,000 and not more than \$10,000 for subsequent offences; and

(b) in the case of a manufacturer, not less than \$1,000 and not more than \$10,000 for the first offence, and of not less than \$2,000 and not more than \$20,000 for subsequent offences.

(2) Any person found guilty of violating any provision under section 1705 of this Act shall be liable for a fine of:

(a) in the case of an individual, not less than \$500 and not more than \$5,000 for the first offence, and of not less than \$1,000 and not more than \$10,000 for subsequent offences; and

(b) in the case of a manufacturer, not less than \$1,000 and not more than \$10,000 for the first offence, and of not less than \$2,000 and not more than \$20,000 for subsequent offences.

(3) Any person found guilty of violating any provision under section 1706 of this Act

shall be liable for a fine of:

(a) in the case of an individual, not less than \$500 and not more than \$5,000 for the first offence, and of not less than \$1,000 and not more than \$10,000 for subsequent offences; and

(b) in the case of a manufacturer, not less than \$1,000 and not more than \$10,000 for the first offence, and of not less than \$2,000 and not more than \$20,000 for subsequent offences.

(4) Any person found guilty of violating any provision under section 1707 of this Act shall be liable for a fine of:

(a) in the case of an individual, not less than \$500 and not more than \$5,000 for the first offence, and of not less than \$1,000 and not more than \$10,000 for subsequent offences;

(b) in the case of the proprietor of a retail establishment, not less than \$1,000 and not more than \$10,000 for the first offence, and of not less than \$2,000 and nor more than \$20,000 for subsequent offences; and

(c) in the case of a manufacturer, not less than \$1,500 and not more than \$10,000 for the first offence, and of not less than \$2,500 and not more than \$20,000 for subsequent offences.

(5) Any proprietor, owner or manager of any premises listed under section 1708 of this Act found guilty of failing to enforce the smoke-free policy applicable to the facility under his or her responsibility, including the posting of prescribed signs and ensuring that any designated smoking areas meet the requirements of the Act and its regulations, shall be liable for a fine of not less than \$500 and not more than \$5,000 for the first offence, and of not less than \$1,000 and not more than \$10,000 for subsequent offences.

(6) Any person found guilty of smoking in a place where smoking is prohibited under section 1708 of this Act shall be liable for a fine of not less than \$500 and not more than \$1,000 for the first offence, and of not less than \$1,000 and not more than \$2,500 for subsequent offences.

(7) Any person found guilty of violating any provision under section 1709 of this Act shall be liable for a fine of:

(a) in the case of an individual, not less than \$2,500 and not more than \$10,000 for the first offence, and of not less than \$5,000 and not more than \$20,000 for the subsequent offences;

(b) in the case of a proprietor of a retail establishment, not less than \$3,000 and not more than \$10,000 for the first offence, and of not less than \$6,000 and not more than \$20,000 for the subsequent offences;

(c) in the case of a wholesale distributor, not less than \$3,500 and not more than \$10,000 for the first offence, and of not less than \$7,000 and not more than \$20,000 for subsequent offences;

(d) in the case of a manufacturer, not less than \$4,000 and not more than \$10,000 for the first offence, and of not less than \$8,000 and not more than \$20,000 for subsequent offences;

(8) In addition to any fines imposed, any person found guilty of violating any provision under section 1709 of this Act shall be liable for a penalty equivalent to the proceeds from the

distribution of illegal tobacco products as well as taxes and duties owed on those products.

(9) Nothing in this Act shall preclude the criminal enforcement of its provisions in a Court of competent jurisdiction.

(10) Where a person is found guilty of an offence under any section of this Act other than section 1709, the Court may impose an additional fine in addition to any other penalty, following an application by the prosecuting party appended to the statement of offence, equal to the amount of monetary benefit gained by the person as a result of the offence, even if the maximum fine is imposed under another provision.

(11) A person who commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(12) Any person found to have violated any requirement under this Act or implementing regulations may be ordered to pay the reasonable costs associated with any inspection, investigation and enforcement action brought about by the non-compliance.

(13) The Minister shall make regulations in respect of the following matters:

- (a) the powers and duties of inspectors;
- (b) the taking of samples;
- (c) the procedure to be followed by inspectors during an inspection;
- (d) the procedure to be followed during an inspection for seizure, as well as the one to be applied and restoration of any tobacco product;
- (e) procedures in relation to fines imposed and collected under the Act;
- (f) prescribed forms;
- (g) any other matters as are necessary for the effective administration and enforcement of this Act.

PART X – FINANCIAL PROVISIONS

§1712. Establishment of the Tobacco Control Fund.

(1) There is hereby established a Fund to be known as the Tobacco Control Fund, which shall comprise of :

- (a) the sum of all fines collected under the Act and regulations;
- (b) the sum of all fees and charges collected under the Act and regulations.

(2) All fines, fees and charges imposed under this Act shall be paid to the Ministry of Finance and all monies received by the Ministry of Finance under this section shall be deposited into the Tobacco Control Account.

(3) The Tobacco Control Account shall be administered by the Secretary of the Ministry of Health and the Secretary of the Ministry of Finance.

(4) Fines, fees and charged collected under the Act and regulations shall be deposited as follows:

- (a) subject to Subsections 1705 and 1706 of this Section, 40 % (forty percent) into the Tobacco Control Account for the funding of authorized costs of the Ministry of health, as approved by the Cabinet, for the effective administration and enforcement of the Act; and

(b) 60 % (sixty percent) to be deposited into the General Fund.

(5) Administration of this part of the Act will be subject to the provisions of the Financial Management Act 1990 and Procurement Code 1988.

(6) The Minister of Health shall, no later than 01 October each year, report to the Cabinet on the following:

(a) the total amount collected and paid into the Tobacco Control Account; and

(b) how the Tobacco Control Account was applied.

(7) Procedures relating to the collection, deposit and refund of bonds pursuant to section 1709(1) of this Act shall be in the manner and form prescribed by regulations.

PART XI – ADMINISTRATION OF THE ACT

§1713. Administration of the Act.

This Act and regulations promulgated under the Act shall be administered by the Ministry of Health.

§1714. Effective Date.

This Act shall take effect on the date of certification in accordance with Article IV of the Constitution and the Rules and Procedures of the Nitijela.

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