

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 661

By: Sparks, Sykes and
Stanislawski of the Senate

6 and

7 Kannady of the House

8
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to civil procedure; amending 12 O.S.
11 2011, Sections 1751, as amended by Section 1, Chapter
12 282, O.S.L. 2012, 1757, 1759, as amended by Section
13 2, Chapter 282, O.S.L. 2012, and 1764 (12 O.S. Supp.
14 2016, Sections 1751 and 1759), which relate to small
15 claims procedure; expanding actions eligible for
16 small claims procedure; authorizing award of certain
17 fees; modifying requirements and procedures for
18 transfer from small claims docket; increasing amount
19 of claim for transfer of certain cases; modifying
20 filing fee for certain actions; amending 12 O.S.
21 2011, Sections 3233, as amended by Section 2, Chapter
22 309, O.S.L. 2015, 3234 and 3236 (12 O.S. Supp. 2016,
23 Section 3233), which relate to interrogatories,
24 production of documents and requests for admissions;
updating language; modifying requirements for
service; modifying procedures for certain responses;
making language gender neutral; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 12 O.S. 2011, Section 1751, as
2 amended by Section 1, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016,
3 Section 1751), is amended to read as follows:

4 Section 1751. A. The following suits may be brought under the
5 small claims procedure:

6 1. Actions for the recovery of money based on contract or tort,
7 including subrogation claims, but excluding libel or slander, in
8 which the amount sought to be recovered, exclusive of attorney fees
9 and other court costs, does not exceed ~~Seven Thousand Five Hundred~~
10 ~~Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);

11 2. Actions to replevy personal property the value of which does
12 not exceed ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Ten
13 Thousand Dollars (\$10,000.00). If the claims for possession of
14 personal property and to recover money are pled in the alternative,
15 the joinder of claims is permissible if neither the value of the
16 property nor the total amount of money sought to be recovered,
17 exclusive of attorney fees and other costs, exceeds ~~Seven Thousand~~
18 ~~Five Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00);
19 and

20 3. Actions in the nature of interpleader, as provided for in
21 Section 2022 of this title, in which the value of the money which is
22 the subject of such action does not exceed ~~Seven Thousand Five~~
23 ~~Hundred Dollars (\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00).

24

1 B. No action may be brought under the small claims procedure by
2 any collection agency, collection agent, or assignee of a claim,
3 except that an action may be brought against an insurer or third-
4 party administrator by a health care provider as that term is
5 defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is
6 an assignee of benefits available under an accident and health
7 insurance policy, trust, plan, or contract.

8 C. In those cases which are uncontested, the amount of attorney
9 fees allowed shall not exceed ten percent (10%) of the judgment.
10 Additionally, upon application to the court supported by sufficient
11 documentation, the court may award attorney fees not to exceed
12 twenty-five percent (25%) of the judgment.

13 D. No action may be brought under the small claims procedure
14 for any alleged claim against any city, county or state agency, or
15 employee of a city, county or state agency, if the claim alleges
16 matters arising from incarceration, probation, parole or community
17 supervision.

18 E. No action by a plaintiff who is currently incarcerated in
19 any jail or prison in the state may be brought against any person or
20 entity under the small claims procedure.

21 F. A small claims affidavit shall include a statement
22 acknowledging that the plaintiff is disclaiming a right to a trial
23 by jury on the merits of the case.

24

1 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1757, is
2 amended to read as follows:

3 Section 1757. A. For matters in which the claim is less than
4 Seven Thousand Five Hundred Dollars (\$7,500.00):

5 1. On motion of the defendant, a small claims action may, in
6 the discretion of the court, be transferred from the small claims
7 docket to another docket of the court; provided, that the motion is
8 filed and notice is given by the defendant to the opposing party or
9 parties by mailing a copy of the motion at least forty-eight (48)
10 hours prior to the time fixed in the order for defendant to appear
11 or answer; and provided, further, that the defendant deposit the sum
12 of Fifty Dollars (\$50.00) as the court cost; and

13 ~~B.~~ 2. The motion to transfer shall be heard at the time fixed
14 in the order and consideration shall be given to any hardship on the
15 plaintiff, complexity of the case, reason for transfer, and other
16 relevant matters. If the motion is denied, the action shall remain
17 on the small claims docket.

18 B. For matters in which the claim is Seven Thousand Five
19 Hundred Dollars (\$7,500.00) or more, on motion of the defendant, a
20 small claims action shall be transferred from the small claims
21 docket to another docket of the court; provided, that the motion is
22 filed and notice is given by the defendant to the opposing party or
23 parties by mailing a copy of the motion at least forty-eight (48)
24 hours prior to the time fixed in the order for defendant to appear

1 or answer; and provided, further, that the defendant deposit the sum
2 of Fifty Dollars (\$50.00) as the court cost.

3 C. If the motion is granted, the defendant as movant shall
4 present within ten (10) days and the court shall cause to be filed
5 an order on a form prepared by the Administrative Office of the
6 Courts transferring the action from the small claims docket to
7 another docket. If the transfer order is not filed by the movant
8 within ten (10) days, it shall be reinstated upon the small claims
9 docket upon motion of the small claims plaintiff, and no further
10 transfer shall be authorized. Before the transfer is effected, the
11 movant shall deposit with the clerk the court costs that are charged
12 in other civil cases under Sections 151 through 157 of Title 28 of
13 the Oklahoma Statutes, less any sums that have already been paid to
14 the clerk. After this filing, the costs and other procedural
15 matters shall be governed as in other civil actions, and not under
16 small claims procedure.

17 ~~C.~~ D. Within twenty (20) days of the date the transfer order is
18 signed, the plaintiff shall file a petition that conforms to the
19 standards of pleadings prescribed by the Oklahoma Pleading Code.
20 The answer of the defendant shall be due within twenty (20) days
21 after the filing of the petition and the reply of the plaintiff in
22 ten (10) days after the answer is filed.

23 ~~¶~~ 1. For matters in which the claim is less than Seven
24 Thousand Five Hundred Dollars (\$7,500.00), if the plaintiff

1 ultimately prevails in the action so transferred by the defendant, a
2 reasonable ~~attorney's~~ attorney fee shall be allowed to plaintiff's
3 attorney to be taxed as costs in the case, in addition to any
4 sanctions which the court may deem appropriate.

5 2. For matters in which the claim is Seven Thousand Five
6 Hundred Dollars (\$7,500.00) or more, if attorney fees are otherwise
7 allowed by law, a reasonable attorney fee shall be allowed to be
8 taxed as costs in the case, in addition to any sanctions which the
9 court may deem appropriate.

10 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1759, as
11 amended by Section 2, Chapter 282, O.S.L. 2012 (12 O.S. Supp. 2016,
12 Section 1759), is amended to read as follows:

13 Section 1759. A. Except as provided by subsection C of this
14 section, if a claim, a counterclaim, or a setoff is filed, prior to
15 the expiration of the time prescribed by Section 1758 of this title,
16 for an amount in excess of ~~Seven Thousand Five Hundred Dollars~~
17 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00), the action shall be
18 transferred to another docket of the district court unless both
19 parties agree in writing and file the agreement with the papers in
20 the action that the claim, counterclaim, or setoff shall be tried
21 under the small claims procedure. If such an agreement has not been
22 filed, a judgment in excess of ~~Seven Thousand Five Hundred Dollars~~
23 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00) may not be enforced
24 for the part that exceeds ~~Seven Thousand Five Hundred Dollars~~

1 ~~(\$7,500.00)~~ Ten Thousand Dollars (\$10,000.00). If the action is
2 transferred to another docket of the district court, the person
3 whose claim exceeded ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~
4 Ten Thousand Dollars (\$10,000.00) shall deposit with the clerk the
5 court costs that are charged in other cases, less any sums that have
6 been already paid to the clerk, or the claim shall be dismissed and
7 the remaining claims, if any, shall proceed under the small claims
8 procedure.

9 B. If the action is transferred to another docket of the
10 district court, the plaintiff shall file a petition that conforms to
11 the standards for pleadings prescribed by the Oklahoma Pleading
12 Code, Section 2001 et seq. of this title, within twenty (20) days
13 from the timely filing of the claim, counterclaim, or setoff. The
14 answer of the defendant shall be due within twenty (20) days after
15 the filing of the petition and ~~the reply of the plaintiff shall be~~
16 ~~due within ten (10) days after the answer is filed.~~

17 C. Except as provided by Section 1757 of this title, if a
18 defendant does not file a counterclaim within the period prescribed
19 by Section 1758 of this title, the action shall not be transferred
20 to another docket of the district court.

21 SECTION 4. AMENDATORY 12 O.S. 2011, Section 1764, is
22 amended to read as follows:

23 Section 1764. A fee of Forty-five Dollars (\$45.00) shall be
24 charged and collected for the filing of the affidavit for the

1 commencement of any action for an amount of ~~One Thousand Five~~
2 ~~Hundred Dollars (\$1,500.00)~~ Five Thousand Dollars (\$5,000.00) or
3 less. Any action in excess of ~~One Thousand Five Hundred Dollars~~
4 ~~(\$1,500.00)~~ Five Thousand Dollars (\$5,000.00) shall be subject to
5 the filing fees provided in Title 28 of the Oklahoma Statutes for
6 the same kind of action as filed in district court. For the filing
7 of any counterclaim or setoff, fees shall be charged and collected
8 pursuant to Section 152.1 of Title 28 of the Oklahoma Statutes.
9 Except as otherwise provided in Section 1772 of this title, no other
10 fee or charge shall be collected by any officer for any service
11 rendered pursuant to the provisions of the Small Claims Procedure
12 Act, or for the taking of affidavits for use in connection with any
13 action tried pursuant to the provisions of the Small Claims
14 Procedure Act. If the affidavit and order are served by the sheriff
15 or a licensed private process server, the court clerk shall collect
16 the usual fee for the sheriff, which shall be taxed as costs in the
17 case. The fee paid to a licensed private process server, as
18 approved by the court, shall be taxed as additional costs in the
19 case. After judgment, the court clerk shall issue such process and
20 shall be entitled to collect only such fees and charges as are
21 allowed by law for like services in other actions. All fees
22 collected as authorized by this section and Section 1772 of this
23 title shall be deposited with other fees that are collected by the
24 district court. Any statute providing for an award of ~~attorneys~~

1 attorney fees shall be applicable to the small claims division if
2 the attorney makes an appearance in the case, whether before or
3 after judgment or on hearing for disclosure of assets.

4 SECTION 5. AMENDATORY 12 O.S. 2011, Section 3233, as
5 amended by Section 2, Chapter 309, O.S.L. 2015 (12 O.S. Supp. 2016,
6 Section 3233), is amended to read as follows:

7 Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party
8 may serve upon any other party written interrogatories to be
9 answered by the party served or, if the party served is a public or
10 private corporation or a partnership or association or governmental
11 agency, by any officer or agent, who shall furnish such information
12 as is available to that party. Interrogatories may, without leave
13 of court, be served upon ~~the plaintiff after commencement of the~~
14 ~~action or upon any other party with the summons and petition or~~
15 ~~after service of the summons and petition on that party~~ any party
16 after the filing of an answer. Upon leave of court or otherwise
17 agreed to in writing by the parties subject to Section 3229 of this
18 title, interrogatories may be served and answered prior to the
19 filing of an answer.

20 Each interrogatory shall be answered separately and fully in
21 writing under oath, unless it is objected to, in which event the
22 objecting party shall state the reasons for objection and shall
23 answer to the extent the interrogatory is not objectionable. When
24 answering each interrogatory, the party shall restate the

1 interrogatory, then provide the answer. The number of
2 interrogatories to a party shall not exceed thirty in number.
3 Interrogatories inquiring as to the names and locations of
4 witnesses, or the existence, location and custodian of documents or
5 physical evidence shall be construed as one interrogatory. All
6 other interrogatories, including subdivisions of one numbered
7 interrogatory, shall be construed as separate interrogatories. No
8 further interrogatories will be served unless authorized by the
9 court. If counsel for a party believes that more than thirty
10 interrogatories are necessary, ~~he~~ counsel shall consult with
11 opposing counsel promptly and attempt to reach a written stipulation
12 as to a reasonable number of additional interrogatories. Counsel
13 are expected to comply with this requirement in good faith. In the
14 event a written stipulation cannot be agreed upon, the party seeking
15 to submit such additional interrogatories shall file a motion with
16 the court (1) showing that counsel have conferred in good faith but
17 sincere attempts to resolve the issue have been unavailing, (2)
18 showing reasons establishing good cause for their use, and (3)
19 setting forth the proposed additional interrogatories. The answers
20 are to be signed by the person making them, and the objections
21 signed by the attorney making them. The party upon whom the
22 interrogatories have been served shall serve a copy of the answers,
23 and objections if any, within thirty (30) days after the service of
24 the interrogatories, ~~except that a defendant may serve answers or~~

1 ~~objections to interrogatories within forty five (45) days after~~
2 ~~service of the summons and complaint upon that defendant.~~ A shorter
3 or longer time may be directed by the court or, in the absence of
4 such an order, agreed to in writing by the parties subject to
5 Section 3229 of this title. All grounds for an objection to an
6 interrogatory shall be stated with specificity. Any ground not
7 stated in a timely objection is waived unless the party's failure to
8 object is excused by the court for good cause shown. The party
9 submitting the interrogatories may move for an order under
10 subsection A of Section 3237 of this title with respect to any
11 objection to or other failure to answer an interrogatory.

12 B. SCOPE; USE AT TRIAL. Interrogatories may relate to any
13 matters which can be inquired into under subsection B of Section
14 3226 of this title, and the answers may be used to the extent
15 permitted by the Oklahoma Evidence Code as set forth in Sections
16 2101 et seq. of this title.

17 An interrogatory otherwise proper is not necessarily
18 objectionable because an answer to the interrogatory involves an
19 opinion or contention that relates to fact or the application of law
20 to fact. The court may order that such an interrogatory need not be
21 answered until after designated discovery has been completed or
22 until a pretrial conference or other later time.

23 C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an
24 interrogatory may be derived or ascertained from the business

1 records, including electronically stored information, of the party
2 upon whom the interrogatory has been served or from an examination,
3 audit or inspection of such business records, including a
4 compilation, abstract or summary thereof, and the burden of deriving
5 or ascertaining the answer is substantially the same for the party
6 serving the interrogatory as for the party served, it is a
7 sufficient answer to such interrogatory to specify the records from
8 which the answer may be derived or ascertained and to afford to the
9 party serving the interrogatory reasonable opportunity to examine,
10 audit or inspect such records and to make copies, compilations,
11 abstracts or summaries thereof. A specification shall be in
12 sufficient detail to permit the party submitting the interrogatory
13 to locate and to identify, as readily as can the party served, the
14 records from which the answer may be ascertained.

15 SECTION 6. AMENDATORY 12 O.S. 2011, Section 3234, is
16 amended to read as follows:

17 Section 3234. A. SCOPE. Any party may serve on any other
18 party a request:

19 1. To produce and permit the party making the request, or
20 someone acting on the party's behalf, to inspect, copy, test and
21 sample any designated documents or electronically stored information
22 - including, but not limited to, writings, drawings, graphs, charts,
23 photographs, motion picture films, phonograph records, tape and
24 video recordings, records and other data compilations from which

1 information can be obtained - translated, if necessary, by the
2 respondent through detection devices into reasonably usable form, or
3 to inspect and copy, test or sample any tangible things which
4 constitute or contain matters within the scope of subsection B of
5 Section 3226 of this title and which are in the possession, custody
6 or control of the party upon whom the request is served; or

7 2. To permit entry upon designated land or other property in
8 the possession or control of the party upon whom the request is
9 served for the purpose of inspection and measuring, surveying,
10 photographing, testing or sampling the property or any designated
11 object or operation thereon, within the scope of subsection B of
12 Section 3226 of this title.

13 B. PROCEDURE. 1. The request to produce or permit inspection
14 or copying may, without leave of court, be served upon ~~the plaintiff~~
15 ~~after commencement of the action and upon any other party with the~~
16 ~~summons and petition or after service of the summons and petition~~
17 ~~upon that party~~ any party after the filing of an answer. Upon leave
18 of court or otherwise agreed to in writing by the parties subject to
19 Section 3229 of this title, request to produce or permit inspection
20 or copying may be served and responded to prior to the filing of an
21 answer.

22 2. The number of requests to produce or permit inspection or
23 copying shall not exceed thirty in number. If counsel for a party
24 believes that more than thirty requests to produce or permit

1 inspection or copying are necessary, ~~he or she~~ counsel shall consult
2 with opposing counsel promptly and attempt to reach a written
3 stipulation as to a reasonable number of additional requests.
4 Counsel are expected to comply with this requirement in good faith.
5 In the event a written stipulation cannot be agreed upon, the party
6 seeking to submit such additional requests for production or
7 inspection shall file a motion with the court (1) showing that
8 counsel have conferred in good faith but sincere attempts to resolve
9 the issue have been unavailing, (2) showing reasons establishing
10 good cause for their use, and (3) setting forth the proposed
11 additional requests for production or inspection.

12 3. The request:

- 13 a. shall set forth and describe with reasonable
14 particularity the items to be inspected either by
15 individual item or by category,
16 b. shall specify a reasonable time, place and manner of
17 making the inspection and performing the related acts,
18 and
19 c. may specify the form or forms in which electronically
20 stored information is to be produced.

- 21 4. a. The party, upon whom the request is served, shall
22 serve a written response within thirty (30) days after
23 the service of the request, ~~except that a defendant~~
24 ~~may serve a response within forty-five (45) days after~~

1 ~~service of the summons and petition upon that~~
2 defendant. The court may allow a shorter or longer
3 time.

4 b. The response shall state, with respect to each item or
5 category, that inspection and related activities shall
6 be permitted as requested, unless the request is
7 objected to, in which event the reasons for objection
8 shall be stated. If objection is made to part of an
9 item or category, the part shall be specified and
10 inspection permitted of the remaining parts.

11 c. If objection is made to the requested form or forms
12 for producing electronically stored information, or if
13 no form was specified in the request, the responding
14 party shall state the form or forms it intends to use.

15 d. The party submitting the request may move for an order
16 under subsection A of Section 3237 of this title with
17 respect to any objection to or other failure to
18 respond to the request or any part thereof, or any
19 failure to permit inspection as requested.

20 5. Unless the parties otherwise agree, or the court otherwise
21 orders:

22 a. a party who produces documents for inspection shall
23 produce them as they are kept in the usual course of
24

1 business or shall organize and label them to
2 correspond with the categories in the request,

3 b. if a request does not specify the form or forms for
4 producing electronically stored information, a
5 responding party shall produce the information in a
6 form or forms in which it is ordinarily maintained or
7 in a form or forms that are reasonably usable, and

8 c. a party is not required to produce the same
9 electronically stored information in more than one
10 form.

11 C. PERSONS NOT PARTIES. A person not a party to the action may
12 be compelled to produce documents and things or to submit to an
13 inspection as provided in Section 2004.1 of this title.

14 SECTION 7. AMENDATORY 12 O.S. 2011, Section 3236, is
15 amended to read as follows:

16 Section 3236. A. REQUEST FOR ADMISSION. A party may serve
17 upon any other party a written request for the admission, for
18 purposes of the pending action only, of the truth of any matters
19 within the scope of Section 3226 of this title set forth in the
20 request that relate to statements or opinions of fact or of the
21 application of law to fact, including the genuineness of any
22 documents described in the request. Copies of documents shall be
23 served with the request for admission unless they have been or are
24 otherwise furnished or made available for inspection and copying.

1 The request may, without leave of court, be served upon ~~the~~
2 ~~plaintiff after commencement of the action and upon any other party~~
3 ~~with the summons and petition or after service of the summons and~~
4 ~~petition upon that party~~ any party after the filing of an answer.
5 Upon leave of court or otherwise agreed to in writing by the parties
6 subject to Section 3229 of this title, the request may be served and
7 responded to prior to the filing of an answer. The number of
8 requests for admissions for each party is limited to thirty. No
9 further requests for admission will be served unless authorized by
10 the court. If counsel for a party believes that more than thirty
11 requests for admissions are necessary, ~~he~~ counsel shall consult with
12 opposing counsel promptly and attempt to reach a written stipulation
13 as to a reasonable number of additional requests for admissions.
14 Counsel are expected to comply with this requirement in good faith.
15 In the event a written stipulation cannot be agreed upon, the party
16 seeking to submit such additional requests for admissions shall file
17 a motion with the court (1) showing that counsel have conferred in
18 good faith but sincere attempts to resolve the issue have been
19 unavailing, (2) showing reasons establishing good cause for their
20 use, and (3) setting forth the proposed additional requests.

21 Each matter of which an admission is requested shall be
22 separately set forth. The matter is admitted unless, within thirty
23 (30) days after service of the request, or within such shorter or
24 longer time as the court may allow, the party to whom the request is

1 directed serves upon the party requesting the admission a written
2 answer or objection addressed to the matter, signed by the party or
3 by ~~his~~ the party's attorney, ~~but unless the court shortens the time,~~
4 ~~a defendant shall not be required to serve answers or objections~~
5 ~~before the expiration of forty-five (45) days after service of the~~
6 ~~summons and petition upon him.~~

7 If objection is made, the reasons therefor shall be stated. The
8 answer shall specifically deny the matter or set forth in detail the
9 reasons why the answering party cannot truthfully admit or deny the
10 matter. A denial shall fairly meet the substance of the requested
11 admission, and when good faith requires that a party qualify his or
12 her answer or deny only a part of the matter of which an admission
13 is requested, he or she shall specify so much of it as is true and
14 qualify or deny the remainder. An answering party may not give lack
15 of information or knowledge as a reason for failure to admit or deny
16 unless ~~he~~ the party states that he or she has made reasonable
17 inquiry and that the information known or readily obtainable by ~~him~~
18 the party is insufficient to enable him or her to admit or deny. A
19 party who considers that a matter of which an admission has been
20 requested presents a genuine issue for trial may not, on that ground
21 alone, object to the request; he or she may, subject to the
22 provisions of subsection D of Section 3237 of this title, deny the
23 matter or set forth reasons why he or she cannot admit or deny it.

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1 The party who has requested the admission may move to determine
2 the sufficiency of the answers or objections. Unless the court
3 determines that an objection is justified, it shall order that an
4 answer be served. If the court determines that an answer does not
5 comply with the requirements of this section, it may order either
6 that the matter is admitted or that an amended answer be served.

7 The court may, in lieu of these orders, determine that final
8 disposition of the request be made at a pretrial conference or at a
9 designated time prior to trial. The provisions of paragraph 4 of
10 subsection A of Section 3237 of this title apply to the award of
11 expenses incurred in relation to the motion.

12 B. EFFECT OF ADMISSION. Any matter admitted under this section
13 is conclusively established unless the court on motion permits
14 withdrawal or amendment of the admission. The court may permit
15 withdrawal or amendment of an admission when the presentation of the
16 merits of the action will be subserved thereby and the party who
17 obtained the admission fails to satisfy the court that withdrawal or
18 amendment will prejudice him or her in maintaining his or her action
19 or defense on the merits.

20 C. SCOPE OF ADMISSIONS. Any admission made by a party under
21 this section is for the purpose of the pending action only and is
22 not an admission ~~by him~~ for any other purpose nor may it be used
23 against him or her in any other proceeding.

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SECTION 8. This act shall become effective November 1, 2017.

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