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THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

JAMES W. DAY*

The desirability of uniformity in certain phases of the law of the various jurisdictions of the United States has long been recognized. The need for uniformity is greatest, of course, in those fields in which the steps leading to the completion of a transaction or project are frequently so taken in two or more jurisdictions as to necessitate the consideration of more than one set of relevant laws or to present difficult questions of conflict of laws that are avoided when the laws of the jurisdictions do not differ. This need for uniformity received recognition at the time of the formation of the American Bar Association in 1878 through the inclusion of a statement in the original constitution of that body that one of its objectives was "to promote . . . uniformity of legislation throughout the nation."¹

In 1881, a committee of the Alabama Bar Association brought to the attention of the American Bar Association² and the bar associations of other states³ the desirability of efforts to attain uniformity in certain fields of the law. In 1889, the American Bar Association appointed a Committee on Uniform State Laws consisting of one member from each state.⁴

The New York Legislature on April 28, 1890, authorized the governor to appoint by and with the consent of the senate three commissioners who should have the duty⁵

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¹POLDERVAART, *NEW MEXICO AND THE UNIFORM LAWS* 3 n.4 (U.N.M. Div. of Research, Dep't of Gov't Pub. No. 43, 1954); SUNDERLAND, *HISTORY OF THE AMERICAN BAR ASSOCIATION* 6 (1953); Ball, *The Organized Movement for Uniform State Legislation*, 9 OHIO ST. L.J. 551 (1948); Rossman, *Uniformity of Law: An Elusive Goal*, 36 A.B.A.J. 175, 176 (1950). The quoted provision is still included in the constitution of the Association. 78 A.B.A. REP. 461 (1953).

²Toll, *Uniform State Laws*, 26 ROCKY MT. L. REV. 450 n.1 (1954).

³Rossman, *supra* note 1, at 177; Comment, *A Comparative Survey of Alabama Legislation in the Field of Uniform Law*, 5 ALA. L. REV. 251 (1952).

⁴12 A.B.A. REP. 50-51, 96 (1889); Barrett and Burke, *Uniform Laws in Arkansas*, 1 ARK. L. REV. 224 (1947). Robert W. Williams of Tallahassee represented Florida on this committee. 12 A.B.A. REP. 96 (1889).

⁵N.Y. Sess. Laws 1890, c. 205 §1.

“ . . . to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects; to ascertain the best means to effect . . . uniformity in the laws of the states, and especially to consider whether it would be wise . . . for the state of New York to invite the other states . . . to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states . . . ”

On August 21, 1890, the American Bar Association, at the instance of its committee on uniform state laws, adopted a resolution recommending the passage by each state, and by the Congress of the United States for the District of Columbia and the territories, of an act similar to that of New York.⁶ In New Jersey⁷ and Pennsylvania⁸ acts were passed respectively on April 14, 1891, and April 15, 1891, providing for the appointment of commissioners on uniform state laws; and on August 28, 1891, the Committee on Uniform State Laws of the American Bar Association reported to that body that legislation of this type was then in effect also in Delaware, Massachusetts, and Michigan.⁹ On March 29, 1892, a similar statute was enacted in Mississippi,¹⁰ and at about the same time a Commission on Uniformity of Legislation was established by Georgia.¹¹ In 1895, it was provided by statute¹² in Florida that three commissioners for the promotion of uniformity of legislation in the United States should be appointed by the governor with the consent of the senate and that they should co-operate and advise with similar commissions appointed in other states.¹³

⁶13 A.B.A. REP. 29-30, 336-37 (1890).

⁷N.J. LAWS 1891, c. 219.

⁸Pa. LAWS 1891, No. 8, at 14.

⁹14 A.B.A. REP. 28-30, 375 (1891); 9 REPORT NAT'L CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 20, 26 (1899).

¹⁰Miss. LAWS 1892, c. 42, §§1-2.

¹¹Toll, *supra* note 2, at 451.

¹²FLA. STAT. §11.01 (1953).

¹³Individuals who have been appointed under this statute in recent decades and the periods over which their appointments extended are as follows: Charles J. Morrow, Tampa, 1919-1933; Louis C. Massey, Orlando, 1921-1925; William Hunter, Tampa, 1922-1933; Gary W. Alexander, Jacksonville, 1926-1933; R. A. Henderson, Jr., Fort Myers, 1933-1936; Scott M. Loftin, Jacksonville, 1933-1936; T. M. Shackelford, Jr., Tampa, 1933-1935; Herbert U. Feibelman, Miami, 1935-1941; George Couper Gibbs, Jacksonville, 1936-1939; Edward McCarthy, Jr., Jacksonville, 1939-1953; M. Luther Mershon, Miami, 1941-1944; R. K. Lewis, West Palm Beach, 1944-1952; James W. Day, Gainesville, 1953-1959; John D. Harris, Jr., St. Petersburg,

The first general meeting of the commissioners was held at Saratoga, New York, on August 24, 25, and 26, 1892, at the time and place of the annual meeting of the American Bar Association.¹⁴ Commissioners were present from each of the eight states mentioned in the preceding paragraph with the exception of Mississippi.¹⁵ Commissions on Uniformity of Legislation were established by eleven additional jurisdictions in 1893,¹⁶ by three in 1894,¹⁷ and by seven in 1895.¹⁸ Florida was one of the last-named group.¹⁹ The organization of commissioners from the participating states and territories in 1896 was named the National Conference of Commissioners on Uniform State Laws,²⁰ the title by which the group continues to be designated. Since 1912, all of the states and territories and the District of Columbia have been officially represented in the Conference.²¹

A second meeting of the commissioners was held in 1892 in New York City on November 15 and 16.²² Since that time, there has been a meeting every year, with the exception of 1945 when war conditions made it impracticable for the commissioners to assemble.

ORGANIZATION AND PROCEDURE OF THE NATIONAL CONFERENCE

The National Conference is composed of commissioners, usually three in number, from each of the states, the District of Columbia, the territories of Alaska and Hawaii, and the Commonwealth of Puerto Rico. A few states appoint more than three commissioners. They do not, however, thereby increase their voting strength, since the vote on the adoption of proposed acts is taken by states;²³ and any commissioner can demand such a vote on other matters coming before the Conference.²⁴ The number of commissioners is further augmented

1953-1959; Warren L. Jones, Jacksonville, 1953-1955; and Guy W. Botts, Jacksonville, 1955-1959. William A. Blount, Pensacola, served as president of the Conference from 1917 until 1920. Robert W. Williams, Tallahassee, was its vice-president in 1902 and 1903.

¹⁴Stimson, *Uniform State Legislation*, 9 REPORT NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS 27, 33 (1899).

¹⁵*Ibid.*

¹⁶16 A.B.A. REP. 346 (1893).

¹⁷17 A.B.A. REP. 349 (1894).

¹⁸18 A.B.A. REP. 335 (1895).

¹⁹Fla. Laws 1895, c. 4447, §1.

²⁰Toll, *supra* note 2, at 2.

²¹1925 HANDBOOK OF NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS 4.

²²*Id.* at 26.

²³Nat'l Conference of Comm'rs on Uniform State Laws, CONST. art. VIII (1952).

²⁴Nat'l Conference of Comm'rs on Uniform State Laws, Bylaws §11 (e) (1952).

by the fact that since August 21, 1943, a commissioner who has served for twenty years may be, and usually is, elected to life membership in the Conference by that body.²⁵ The principal administrative officer of each state legislative reference bureau or other agency charged by law with the duty of drafting legislation at the request of the legislative or executive officers of the state is ex officio an associate member of the Conference.²⁶ As such he has the privileges of the floor and is eligible to serve on committees but does not have the right to vote in the Conference.²⁷ As of 1953, there were twenty-five life members and twenty associate members of the Conference.²⁸

In most jurisdictions the commissioners are appointed by the chief executive acting under express legislative authority, and in the other jurisdictions the appointments are made by virtue of the general executive authority.²⁹ The commissioners serve without compensation, but from the beginning many states have made an appropriation to cover their necessary expenses.³⁰ As early as 1894³¹ and 1895,³² the Committee on Uniform State Laws of the American Bar Association recommended that no state appoint commissioners without providing for such expenses. Probably a majority of the states now defray these expenses, including those connected with the attendance of their commissioners at the annual meeting of the Conference.³³ The constitution³⁴ of the Conference places on the commissioners from each state the duty "to secure the passage of acts . . . providing for . . . the expenses of the Commissioners from such state in attending the Annual

²⁵Nat'l Conference of Comm'rs on Uniform State Laws, CONST. art. II, §1 (e) (1952).

²⁶*Id.* art. II, §1 (b).

²⁷*Ibid.*

²⁸1953 HANDBOOK OF NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS 18, 31.

²⁹*Id.* at 321.

³⁰Stimson, *Uniform State Legislation*, 9 REPORT NAT'L CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS 27, 33 (1899).

³¹17 A.B.A. REP. 349 (1894).

³²18 A.B.A. REP. 335 (1895).

³³E.g., CONN. REV. GEN. STAT. §1435c (Supp. 1953); MASS. ANN. LAWS c. 6, §28 (1952); MICH. STAT. ANN. §2.315 (1952); N.Y. EXEC. LAW §165. Sec. 5 of the Model Act for the Appointment of Commissioners on Uniform State Laws, which was promulgated in 1944, also provides for payment of the expenses of the commissioners. This act has been adopted in Alabama (1951), Arizona (1953), Arkansas (1945), Montana (1945), New Hampshire (1947), Oklahoma (1949), Oregon (1949), and Texas (1951). 9 U.L.A. 31 (Supp. 1954).

³⁴Nat'l Conference of Comm'rs on Uniform State Laws, CONST. art. IV (d) (1952).

Conference." The commissioners from Florida have been either derelict or unsuccessful with reference to this duty.

The Conference and its members have been described in the following terms:³⁵

"The Conference itself is an organization of great inherent strength. Its personnel, recruited from the bench, bar, and classrooms of the 53 jurisdictions, encompasses the social, economic, and political experience of rural and urban societies and the contrasting viewpoints of a geographically diverse nation. The personal scholarship, industry, and integrity of the Commissioners have produced an informal legislative body of unmatched competence. Individually and collectively the Commissioners have performed their duties with a responsibility which assures not only a quality product but also reflects a high sense of public duty in its manufacture."

Included among those who have participated in the work of the Conference are James Barr Ames, Louis D. Brandeis, John W. Davis, William Draper Lewis, Roscoe Pound, Wiley Rutledge, John H. Wigmore, Samuel Williston, and Woodrow Wilson.

The Conference is formally organized under a Constitution and bylaws. It convenes each year at the site of the annual meeting of the American Bar Association and remains in session for the week immediately preceding that meeting. It maintains its headquarters office and a permanent staff in the new American Bar Center in Chicago. Much of its preliminary work is done there and elsewhere between annual meetings by individuals and by committees through correspondence and in special meetings.

The Conference is divided by its president into seven sections, and no commissioner serves as a member of more than one section at the same time.³⁶ For each contemplated new act, the president appoints a special committee, usually from the members of one of the sections, to investigate and, if deemed desirable, to draft the act under consideration.³⁷ In the case of the more important acts, an expert draftsman is sometimes employed to work with the committee.

³⁵Horack, *The Future of Uniform Laws — The Commercial Code*, 9 OHIO ST. L.J. 555, 556 (1948).

³⁶Nat'l Conference of Comm'rs on Uniform State Laws, CONST. art. III, §2 (1952).

³⁷*Id.* art. III, §3 (3).

During the preparation of the act, the committee consults with the appropriate committee of the American Bar Association or, if there is no such committee or section, with the secretary of that organization.³⁸ In appropriate situations, it confers also with officers of the Council of State Governments and the Interstate Commission on Crime, with representatives of trade, financial, labor, and similar organizations, and with individuals who are conversant with the field in which the proposed act lies. The contributions of those who are called upon in this fashion are frequently of inestimable value.

The chairman of the committee in charge of the act presents his draft section by section before a meeting of the section of the Conference to which his committee is assigned. At this meeting, designated individuals not members of the Conference and representatives of appropriate organizations are frequently invited to participate in the consideration of the act. Extensive revision often is made in this meeting. After the act is approved by the section, it is referred to the Conference Committee on Style for revision as to phraseology and similar matters.³⁹

The act is then mimeographed and submitted for tentative approval to a meeting of the Conference. Here, too, selected individuals and representatives of associations not affiliated with the Conference are frequently invited to participate in the discussion. The committee that has prepared the act sits facing the assembly, and its chairman presents the act section by section. The consideration given by the Conference to each section is deliberate, painstaking, and thorough. Each commissioner evaluates the various provisions generally and from the legal, economic, and social background of his own jurisdiction and suggests such changes as he deems desirable. The committee in charge of the act often accepts these suggestions at once. In other instances, a vote is taken on formally proposed alterations. The Conference can refer the act back to the committee for further work. Sometimes this procedure is repeated in several annual meetings before the tentative approval of the Conference is obtained.

After an act has been tentatively approved at one annual meeting of the Conference, copies as amended and with such further revision as the committee in charge of it may desire are printed and distributed to the members of the Conference; and it is again presented to the

³⁸Nat'l Conference of Comm'rs on Uniform State Laws, Bylaws §21 (1952).

³⁹Nat'l Conference of Comm'rs on Uniform State Laws, CONST. art. III, §3d (1952).

Conference at the next annual meeting.⁴⁰ When an act receives the final approval of the Conference and the sanction of the House of Delegates of the American Bar Association, it is recommended to the various jurisdictions for adoption.

Uniform acts are acts promulgated by the Conference in fields of law in which it feels that uniformity among the various jurisdictions is desirable. Model acts are acts drafted by it that cover subject matter concerning which, while there is no pressing need for uniformity, there seems to be a demand for legislation in a substantial number of states.⁴¹ Uniform acts are recommended to all jurisdictions for adoption. Model acts are prepared merely for the convenience of such legislative bodies as may be interested in them. Opinions sometimes differ as to how a particular act should be classified in this respect. When the question is close, the Conference tends to designate the act as a uniform act.

In order to attain the goal of uniformity in a field of law, it is essential not only that the relevant statutory law of the jurisdictions be in accord but also that identical or similar provisions of that law be construed in the same manner by the various courts which interpret it. In order to call to the attention of courts and individuals the fact that an act is a uniform act, it is customary to embody in it a short-title provision reading, "This act may be cited as the Uniform . . . Act." In a further effort to obtain uniformity of interpretation, the Conference has since about 1912 included in most uniform acts a provision that "this act shall be so interpreted as to effectuate its purpose to make uniform the law of those states or jurisdictions which enact it."⁴²

It should be noted, however, that the inclusion by a legislature of the word *uniform* in the title of an act does not necessarily indicate that the act has the sanction of the Conference. Thus chapter 691 of Florida Statutes 1953 is entitled the "Uniform Trust Administration Law," and section 691.01 provides that the chapter may be cited

⁴⁰The Executive Committee of the Conference can waive the requirement that an act be considered at more than one annual meeting before it is approved. To do so, it must adopt a resolution to that effect at least 30 days before the annual meeting at which the act is to be considered and give immediate notice in writing to all members of the Conference. *Id.* art VIII, §3. This action is rarely, if ever, taken.

⁴¹Barrett and Burke, *supra* note 4, at 225, n.2.

⁴²Hargest, *Keeping the Uniform State Laws Uniform*, 76 U. PA. L. REV. 178, 180 (1927).

by that name. The act has, however, never been approved by the Conference. Similarly, when the Conference withdraws a previously approved act from its active list, a jurisdiction that has theretofore adopted it is likely to continue it in effect under its former designation as a uniform act. The Uniform Mechanics' Lien Act, for example, which was adopted by Florida in 1935,⁴³ was withdrawn as a uniform act by the Conference in August, 1943; but it remains in effect in Florida under its original title as the "Uniform Mechanics' Lien Law."⁴⁴

The funds necessary for carrying on the activities of the Conference are derived from small appropriations made by a majority of the states and contributions from the American Bar Association and many of the state bar associations. Occasionally, too, grants are obtained for special projects from foundations and other sources. For the preparation of the Uniform Commercial Code by the Conference and the American Law Institute, for example, \$250,000 was made available by the Maurice and Laura Falk Foundation of Pittsburgh; and an additional \$100,000 was contributed by the Beaumont Foundation of Cleveland and ninety-eight business, industrial, financial and transportation concerns and law firms.⁴⁵ It is not suggested, of course, that the donations made in connection with this enterprise, which is by far the most stupendous in which the Conference has participated, are typical.

ACHIEVEMENTS OF THE CONFERENCE

Forty-eight uniform acts promulgated by the Conference are at present recommended by it for adoption by all jurisdictions.⁴⁶ These acts and the dates as of which they were respectively first approved by the Conference are as follows: Acknowledgment Act, 1949 (amended 1955); Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, 1936; Adoption Act, 1953; Ancillary

⁴³Fla. Laws 1935, c. 17097.

⁴⁴FLA. STAT. §§84.01-35 (1953). The act as originally adopted in Florida has been amended in some respects by Fla. Laws 1953, cc. 28243, 28244.

⁴⁵Schnader, *The New Commercial Code: Modernizing Our Uniform Commercial Acts*, 36 A.B.A.J. 179, 180 (1950).

⁴⁶The data submitted in this and the two succeeding paragraphs have been compiled by so supplementing those contained in the report made to the Conference in August, 1954, by its Committee on Obsolete Acts — BOGERT, LUTHER, AND SCHNADER, REPORT ON OBSOLETE ACTS 1-9 (mimeographed materials 1954) — as to include the acts subsequently approved by the Conference that year.

Administration of Estates Act, 1949 (amended 1953); Aircraft Financial Responsibility Act, 1954; Arbitration Act, 1955; Business Records as Evidence Act, 1936; Act on Blood Tests to Determine Paternity, 1952; Civil Liability for Support Act, 1954; Commercial Code,⁴⁷ 1951 (amended 1953); Common Trust Fund Act, 1938 (amended 1952); Contribution Among Tortfeasors Act, 1955; Criminal Extradition Act, 1936; Rules of Criminal Procedure, 1952; Disposition of Unclaimed Property Act, 1954; Declaratory Judgments Act, 1922; Divorce Recognition Act, 1947; Enforcement of Foreign Judgments Act, 1948; Rules of Evidence Act, 1953; Federal Tax Lien Registration Act, 1926; Fiduciaries Act, 1922; Flag Act, 1917; Foreign Depositions Act, 1920; Fraudulent Conveyances Act, 1918; Insurers Liquidation Act, 1939; Interstate Arbitration of Death Taxes Act, 1943; Interstate Compromise of Death Taxes Act, 1943; Judicial Notice of Foreign Law Act, 1936; Limited Partnership Act, 1916; Marriage License Application Act, 1950; Motor Vehicle Certificate of Title and Anti-Theft Act, 1955; Narcotic Drug Act, 1932 (amended 1942 and 1952); Partnership Act, 1914; Photographic Copies of Business and Public Records as Evidence Act, 1949; Post-Conviction Procedure Act, 1955; Prenatal Blood Test Act, 1950; Preservation of Private Business Records Act, 1954; Principal and Income Act, 1931; Probate of Foreign Wills Act, 1950; Proof of Statutes Act, 1920; Reciprocal Enforcement of Support Act, 1952; Reciprocal Transfer Tax Act, 1928; Simultaneous Death Act, 1940 (amended 1953); Single Publication Act, 1952; Small Estates Act, 1951; Supervision of Trustees for Charitable Purposes Act, 1954; Veterans' Guardianship Act, 1942; and Vital Statistics Act, 1942.

The ten model acts drafted by the Conference that remain on its active list are as follows: Act to Provide for the Appointment of Commissioners, 1944; Anti-Gambling Act, 1952; Court Administrator Act, 1948; Crime Investigating Commission Act, 1952; Department of Justice Act, 1952; Act on Perjury, 1952; Police Council Act, 1952; Post-Mortem Examinations Act, 1954; State Administrative Procedure Act, 1944; and State Witness Immunity Act, 1952.

The Conference has at various times promulgated eighty-seven other uniform or model acts. It subsequently has declared thirty-three of these to be obsolete, has substituted newer acts for twenty-

⁴⁷The Commercial Code supersedes the Bills of Lading Act, the Chattel Mortgage Act, the Conditional Sales Act, the Negotiable Instruments Laws, the Sales Act, the Stock Transfer Act, the Trust Receipts Act, and the Warehouse Receipts Act. Most of these acts are still in effect in many jurisdictions.

four, and has placed four on the inactive list pending further study. It has not removed the remaining twenty-six of these acts from its active list. Due to existing coverage of the respective fields, however, or to opposition to the acts in question, they have not received wide adoption and are retained on the list of the Conference primarily for consideration in jurisdictions having a need for such legislation.⁴⁸

New uniform and model acts approved by the Conference in any year are published, together with appropriate comments, in the *Handbook* of the Conference for that year. The *Handbook* also contains drafts of acts that have been tentatively approved that year subject to further action at a subsequent annual meeting. Uniform and model acts that have been enacted in at least one jurisdiction are set forth in a fifteen-volume set entitled *Uniform Laws Annotated*.⁴⁹ This work shows under each section of every act any deviations from the original that have been made in enacting the section in the various jurisdictions. It also annotates under each section all decisions that construe the section. The set is kept up to date by cumulative annual pocket parts and occasional new volumes.

Certainly everyone connected with the Conference is aware that its work is not perfect. Particularly is it impossible in drafting an act to foresee subsequent changes of conditions that may affect its desirability at a future period. Many of the instances in which a uniform or model act has later been amended, superseded by a new act or declared obsolete are attributable to this factor.

At times, too, the functioning of an act after its adoption in one or more jurisdictions focuses attention upon matters that were overlooked in its preparation and leads the Conference to amend the act or to replace it with a more perfect version. The Reciprocal En-

⁴⁸The following acts are in this category: Absence as Evidence of Death and Absentees' Property Act, 1939; Act Concerning the Administration of Charitable Trusts, Devises, and Bequests, 1944; Act Governing Secured Creditors' Dividends in Liquidation Proceedings, 1939; Business Corporation Act, 1928; Composite Reports as Evidence Act, 1935; Criminal Statistics Act, 1946; Estates Act, 1938; Execution of Wills Act, 1940; Expert Testimony Act, 1937; Illegitimacy Act, 1927; Interparty Agreement Act, 1925; Joint Obligations Act, 1925; Official Reports as Evidence Act, 1936; Powers of Foreign Representatives Act, 1947; Power of Sale Mortgage Foreclosure Act, 1940; Property Act, 1938; Resale Price Control Act, 1940; Reverter of Realty Act, 1944; Rule Against Perpetuities Act, 1944; Statute of Limitations Act, 1939; Trustees' Accounting Act, 1937; Trusts Act, 1937; Unauthorized Insurers Act, 1938; Vendor and Purchaser Risk Act, 1935; War Service Validation Act, 1944; Written Obligations Act, 1925.

⁴⁹This set is published by Edward Thompson Co., Brooklyn, N. Y.

forcement of Support Act, for example, was promulgated in 1950 and was adopted in forty jurisdictions within a very short period. Experience with the act in these jurisdictions brought to light so many needed additions and changes that the Conference replaced it in 1952 with a new act of the same name.⁵⁰

In general, however, the results of the deliberations of the Conference are excellent. Codification and partial codification are always difficult; and the very fact that the Conference never permits pride of authorship to interfere with subsequent modernization, improvement or even repudiation of acts previously approved further augments the confidence that can be placed in its recommendations. The necessity for occasional later modifications of this type is attributable to the fluidity that must be maintained in the law in an ever-changing environment and to the difficulty, which only too frequently is brought home to lawyers, of always attaining perfection in matters pertaining to the law.

It would indeed be difficult to devise a system that would ensure the subjection of proposed acts to a more careful scrutiny than they receive under the procedure established by the Conference. Acts approved by it, therefore, merit consideration by legislative bodies.

⁵⁰The later version of this act has been in effect since June 16, 1953. Fla. Laws 1955, c. 29901.

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