
SUBSTITUTE SENATE BILL 6302

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Financial Institutions, Insurance & Housing
(originally sponsored by Senators Winsley and Prentice; by request of
Insurance Commissioner)

Read first time 02/05/98.

1 AN ACT Relating to the risk-based capital of health carriers;
2 amending RCW 48.42.040; and adding new sections to chapter 48.43 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout sections 1 through 14 of this act unless the context clearly
6 requires otherwise.

7 (1) "Adjusted RBC report" means an RBC report that has been
8 adjusted by the commissioner in accordance with section 2(4) of this
9 act.

10 (2) "Corrective order" means an order issued by the commissioner
11 specifying corrective actions that the commissioner has determined are
12 required.

13 (3) "Domestic carrier" means any carrier domiciled in this state,
14 or any person or entity subject to chapter 48.42 RCW.

15 (4) "Foreign or alien carrier" means any carrier that is licensed
16 to do business in this state but is not domiciled in this state, or any
17 person or entity subject to chapter 48.42 RCW not domiciled in this
18 state.

1 (5) "NAIC" means the national association of insurance
2 commissioners.

3 (6) "Negative trend" means, with respect to a carrier, a negative
4 trend over a period of time, as determined in accordance with the
5 "trend test calculation" included in the RBC instructions.

6 (7) "RBC" means risk-based capital.

7 (8) "RBC instructions" means the RBC report including risk-based
8 capital instructions adopted by the NAIC, as such RBC instructions may
9 be amended by the NAIC from time to time in accordance with the
10 procedures adopted by the NAIC.

11 (9) "RBC level" means a carrier's company action level RBC,
12 regulatory action level RBC, authorized control level RBC, or mandatory
13 control level RBC where:

14 (a) "Company action level RBC" means, with respect to any carrier,
15 the product of 2.0 and its authorized control level RBC;

16 (b) "Regulatory action level RBC" means the product of 1.5 and its
17 authorized control level RBC;

18 (c) "Authorized control level RBC" means the number determined
19 under the risk-based capital formula in accordance with the RBC
20 instructions;

21 (d) "Mandatory control level RBC" means the product of .70 and the
22 authorized control level RBC.

23 (10) "RBC plan" means a comprehensive financial plan containing the
24 elements specified in section 3(2) of this act. If the commissioner
25 rejects the RBC plan, and it is revised by the carrier, with or without
26 the commissioner's recommendation, the plan shall be called the
27 "revised RBC plan."

28 (11) "RBC report" means the report required in section 2 of this
29 act.

30 (12) "Total adjusted capital" means the sum of:

31 (a) Either a carrier's statutory capital and surplus or net worth,
32 or both, as determined in accordance with statutory accounting
33 applicable to the annual financial statements required to be filed with
34 the commissioner; and

35 (b) Other items, if any, as the RBC instructions may provide.

36 NEW SECTION. **Sec. 2.** (1) Every domestic carrier shall, on or
37 prior to the filing date of March 1st, prepare and submit to the
38 commissioner a report of its RBC levels as of the end of the calendar

1 year just ended, in a form and containing such information as is
2 required by the RBC instructions. In addition, every domestic carrier
3 shall file its RBC report:

4 (a) With the NAIC in accordance with the RBC instructions; and

5 (b) With the insurance commissioner in any state in which the
6 carrier is authorized to do business, if the insurance commissioner has
7 notified the carrier of its request in writing, in which case the
8 carrier shall file its RBC report not later than the later of:

9 (i) Fifteen days from the receipt of notice to file its RBC report
10 with that state; or

11 (ii) The filing date.

12 (2) A carrier's RBC shall be determined in accordance with the
13 formula set forth in the RBC instructions. The formula shall take into
14 account (and may adjust for the covariance between):

15 (a) The risk with respect to the carrier's assets;

16 (b) The risk of adverse insurance experience with respect to the
17 carrier's liabilities and obligations;

18 (c) The interest rate risk with respect to the carrier's business;
19 and

20 (d) All other business risks and such other relevant risks as are
21 set forth in the RBC instructions; determined in each case by applying
22 the factors in the manner set forth in the RBC instructions.

23 (3) An excess of capital over the amount produced by the risk-based
24 capital requirements contained in sections 1 through 14 of this act and
25 the formulas, schedules, and instructions referenced in sections 1
26 through 14 of this act is desirable in the business of insurance.
27 Accordingly, carriers should seek to maintain capital above the RBC
28 levels required by sections 1 through 14 of this act. Additional
29 capital is used and useful in the insurance business and helps to
30 secure a carrier against various risks inherent in, or affecting, the
31 business of insurance and not accounted for or only partially measured
32 by the risk-based capital requirements contained in sections 1 through
33 14 of this act.

34 (4) If a domestic carrier files an RBC report that in the judgment
35 of the commissioner is inaccurate, then the commissioner shall adjust
36 the RBC report to correct the inaccuracy and shall notify the carrier
37 of the adjustment. The notice shall contain a statement of the reason
38 for the adjustment.

1 NEW SECTION. **Sec. 3.** (1) "Company action level event" means any
2 of the following events:

3 (a) The filing of an RBC report by a carrier which indicates that:

4 (i) The carrier's total adjusted capital is greater than or equal
5 to its regulatory action level RBC but less than its company action
6 level RBC; or

7 (ii) The carrier has total adjusted capital which is greater than
8 or equal to its company action level RBC but less than the product of
9 its authorized control level RBC and 2.5 and has a negative trend;

10 (b) The notification by the commissioner to the carrier of an
11 adjusted RBC report that indicates an event in (a) of this subsection,
12 provided the carrier does not challenge the adjusted RBC report under
13 section 7 of this act; or

14 (c) If, under section 7 of this act, a carrier challenges an
15 adjusted RBC report that indicates the event in (a) of this subsection,
16 the notification by the commissioner to the carrier that the
17 commissioner has, after a hearing, rejected the carrier's challenge.

18 (2) In the event of a company action level event, the carrier shall
19 prepare and submit to the commissioner an RBC plan that:

20 (a) Identifies the conditions that contribute to the company action
21 level event;

22 (b) Contains proposals of corrective actions that the carrier
23 intends to take and would be expected to result in the elimination of
24 the company action level event;

25 (c) Provides projections of the carrier's financial results in the
26 current year and at least the four succeeding years, both in the
27 absence of proposed corrective actions and giving effect to the
28 proposed corrective actions, including projections of statutory
29 operating income, net income, capital, surplus, capital and surplus,
30 and net worth. The projections for both new and renewal business might
31 include separate projections for each major line of business and
32 separately identify each significant income, expense, and benefit
33 component;

34 (d) Identifies the key assumptions impacting the carrier's
35 projections and the sensitivity of the projections to the assumptions;
36 and

37 (e) Identifies the quality of, and problems associated with, the
38 carrier's business, including but not limited to its assets,
39 anticipated business growth and associated surplus strain,

1 extraordinary exposure to risk, mix of business, and use of
2 reinsurance, if any, in each case.

3 (3) The RBC plan shall be submitted:

4 (a) Within forty-five days of the company action level event; or

5 (b) If the carrier challenges an adjusted RBC report under section
6 7 of this act, within forty-five days after notification to the carrier
7 that the commissioner has, after a hearing, rejected the carrier's
8 challenge.

9 (4) Within sixty days after the submission by a carrier of an RBC
10 plan to the commissioner, the commissioner shall notify the carrier
11 whether the RBC plan may be implemented or is, in the judgment of the
12 commissioner, unsatisfactory. If the commissioner determines the RBC
13 plan is unsatisfactory, the notification to the carrier shall set forth
14 the reasons for the determination, and may set forth proposed revisions
15 that will render the RBC plan satisfactory. Upon notification from the
16 commissioner, the carrier shall prepare a revised RBC plan, that may
17 incorporate by reference any revisions proposed by the commissioner,
18 and shall submit the revised RBC plan to the commissioner:

19 (a) Within forty-five days after the notification from the
20 commissioner; or

21 (b) If the carrier challenges the notification from the
22 commissioner under section 7 of this act, within forty-five days after
23 a notification to the carrier that the commissioner has, after a
24 hearing, rejected the carrier's challenge.

25 (5) In the event of a notification by the commissioner to a carrier
26 that the carrier's RBC plan or revised RBC plan is unsatisfactory, the
27 commissioner may, subject to the carrier's rights to a hearing under
28 section 7 of this act, specify in the notification that the
29 notification constitutes a regulatory action level event.

30 (6) Every domestic carrier that files an RBC plan or revised RBC
31 plan with the commissioner shall file a copy of the RBC plan or revised
32 RBC plan with the insurance commissioner in any state in which the
33 carrier is authorized to do business if:

34 (a) Such state has an RBC provision substantially similar to
35 section 8(1) of this act; and

36 (b) The insurance commissioner of that state has notified the
37 carrier of its request for the filing in writing, in which case the
38 carrier shall file a copy of the RBC plan or revised RBC plan in that
39 state no later than the later of:

- 1 (i) Fifteen days after the receipt of notice to file a copy of its
2 RBC plan or revised plan with the state; or
3 (ii) The date on which the RBC plan or revised RBC plan is filed
4 under subsections (3) and (4) of this section.

5 NEW SECTION. **Sec. 4.** (1) "Regulatory action level event" means,
6 with respect to any carrier, any of the following events:

7 (a) The filing of an RBC report by the carrier which indicates that
8 the carrier's total adjusted capital is greater than or equal to its
9 authorized control level RBC but less than its regulatory action level
10 RBC;

11 (b) The notification by the commissioner to a carrier of an
12 adjusted RBC report that indicates the event in (a) of this subsection,
13 provided the carrier does not challenge the adjusted RBC report under
14 section 7 of this act;

15 (c) If, under section 7 of this act, the carrier challenges an
16 adjusted RBC report that indicates the event in (a) of this subsection,
17 the notification by the commissioner to the carrier that the
18 commissioner has, after a hearing, rejected the carrier's challenge;

19 (d) The failure of the carrier to file an RBC report by the filing
20 date, unless the carrier has provided an explanation for such failure
21 that is satisfactory to the commissioner and has cured the failure
22 within ten days after the filing date;

23 (e) The failure of the carrier to submit an RBC plan to the
24 commissioner within the time period set forth in section 3(3) of this
25 act;

26 (f) Notification by the commissioner to the carrier that:

27 (i) The RBC plan or revised RBC plan submitted by the carrier is,
28 in the judgment of the commissioner, unsatisfactory; and

29 (ii) The notification constitutes a regulatory action level event
30 with respect to the carrier, provided the carrier has not challenged
31 the determination under section 7 of this act;

32 (g) If, under section 7 of this act, the carrier challenges a
33 determination by the commissioner under (f) of this subsection, the
34 notification by the commissioner to the carrier that the commissioner
35 has, after a hearing, rejected the challenge;

36 (h) Notification by the commissioner to the carrier that the
37 carrier has failed to adhere to its RBC plan or revised RBC plan, but
38 only if such failure has a substantial adverse effect on the ability of

1 the carrier to eliminate the company action level event in accordance
2 with its RBC plan or revised RBC plan and the commissioner has so
3 stated in the notification, provided the carrier has not challenged the
4 determination under section 7 of this act; or

5 (i) If, under section 7 of this act, the carrier challenges a
6 determination by the commissioner under (h) of this subsection, the
7 notification by the commissioner to the carrier that the commissioner
8 has, after a hearing, rejected the challenge.

9 (2) In the event of a regulatory action level event the
10 commissioner shall:

11 (a) Require the carrier to prepare and submit an RBC plan or, if
12 applicable, a revised RBC plan;

13 (b) Perform the examination or analysis the commissioner deems
14 necessary of the assets, liabilities, and operations of the carrier
15 including a review of its RBC plan or revised RBC plan; and

16 (c) Subsequent to the examination or analysis, issue an order
17 specifying those corrective actions the commissioner determines are
18 required.

19 (3) In determining corrective actions, the commissioner may take
20 into account those factors deemed relevant with respect to the carrier
21 based upon the commissioner's examination or analysis of the assets,
22 liabilities, and operations of the carrier, including, but not limited
23 to, the results of any sensitivity tests undertaken pursuant to the RBC
24 instructions. The RBC plan or revised RBC plan shall be submitted:

25 (a) Within forty-five days after the occurrence of the regulatory
26 action level event;

27 (b) If the carrier challenges an adjusted RBC report under section
28 7 of this act and the challenge is not frivolous in the judgment of the
29 commissioner within forty-five days after the notification to the
30 carrier that the commissioner has, after a hearing, rejected the
31 carrier's challenge; or

32 (c) If the carrier challenges a revised RBC plan under section 7 of
33 this act and the challenge is not frivolous in the judgment of the
34 commissioner, within forty-five days after the notification to the
35 carrier that the commissioner has, after a hearing, rejected the
36 carrier's challenge.

37 (4) The commissioner may retain actuaries and investment experts
38 and other consultants as may be necessary in the judgment of the
39 commissioner to review the carrier's RBC plan or revised RBC plan,

1 examine or analyze the assets, liabilities, and operations of the
2 carrier and formulate the corrective order with respect to the carrier.
3 The fees, costs, and expenses relating to consultants shall be borne by
4 the affected carrier or other party as directed by the commissioner.

5 NEW SECTION. **Sec. 5.** (1) "Authorized control level event" means
6 any of the following events:

7 (a) The filing of an RBC report by the carrier which indicates that
8 the carrier's total adjusted capital is greater than or equal to its
9 mandatory control level RBC but less than its authorized control level
10 RBC;

11 (b) The notification by the commissioner to the carrier of an
12 adjusted RBC report that indicates the event in (a) of this subsection,
13 provided the carrier does not challenge the adjusted RBC report under
14 section 7 of this act;

15 (c) If, under section 7 of this act, the carrier challenges an
16 adjusted RBC report that indicates the event in (a) of this subsection,
17 notification by the commissioner to the carrier that the commissioner
18 has, after a hearing, rejected the carrier's challenge;

19 (d) The failure of the carrier to respond, in a manner satisfactory
20 to the commissioner, to a corrective order, provided the carrier has
21 not challenged the corrective order under section 7 of this act; or

22 (e) If the carrier has challenged a corrective order under section
23 7 of this act and the commissioner has, after a hearing, rejected the
24 challenge or modified the corrective order, the failure of the carrier
25 to respond, in a manner satisfactory to the commissioner, to the
26 corrective order subsequent to rejection or modification by the
27 commissioner.

28 (2) In the event of an authorized control level event with respect
29 to a carrier, the commissioner shall:

30 (a) Take those actions required under section 4 of this act
31 regarding a carrier with respect to which a regulatory action level
32 event has occurred; or

33 (b) If the commissioner deems it to be in the best interests of
34 either the policyholders or subscribers, or both, and creditors of the
35 carrier and of the public, take those actions necessary to cause the
36 carrier to be placed under regulatory control under chapter 48.31 RCW.
37 In the event the commissioner takes such actions, the authorized
38 control level event is sufficient grounds for the commissioner to take

1 action under chapter 48.31 RCW, and the commissioner shall have the
2 rights, powers, and duties with respect to the carrier as are set forth
3 in chapter 48.31 RCW. In the event the commissioner takes actions
4 under this subsection (2)(b) pursuant to an adjusted RBC report, the
5 carrier is entitled to those protections afforded to carriers under the
6 provisions of RCW 48.31.121 pertaining to summary proceedings.

7 NEW SECTION. **Sec. 6.** (1) "Mandatory control level event" means
8 any of the following events:

9 (a) The filing of an RBC report which indicates that the carrier's
10 total adjusted capital is less than its mandatory control level RBC;

11 (b) Notification by the commissioner to the carrier of an adjusted
12 RBC report that indicates the event in (a) of this subsection, provided
13 the carrier does not challenge the adjusted RBC report under section 7
14 of this act; or

15 (c) If, under section 7 of this act, the carrier challenges an
16 adjusted RBC report that indicates the event in (a) of this subsection,
17 notification by the commissioner to the carrier that the commissioner
18 has, after a hearing, rejected the carrier's challenge.

19 (2) In the event of a mandatory control level event, with respect
20 to a carrier, the commissioner shall take those actions necessary to
21 place the carrier under regulatory control under chapter 48.31 RCW. In
22 that event, the mandatory control level event is sufficient grounds for
23 the commissioner to take action under chapter 48.31 RCW, and the
24 commissioner shall have the rights, powers, and duties with respect to
25 the carrier as are set forth in chapter 48.31 RCW. If the commissioner
26 takes actions pursuant to an adjusted RBC report, the carrier is
27 entitled to the protections of RCW 48.31.121 pertaining to summary
28 proceedings. However, the commissioner may forego action for up to
29 ninety days after the mandatory control level event if the commissioner
30 finds there is a reasonable expectation that the mandatory control
31 level event may be eliminated within the ninety-day period.

32 NEW SECTION. **Sec. 7.** (1) Upon notification to a carrier by the
33 commissioner of any of the following, the carrier shall have the right
34 to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which
35 the carrier may challenge any determination or action by the
36 commissioner:

37 (a) Of an adjusted RBC report; or

1 (b)(i) That the carrier's RBC plan or revised RBC plan is
2 unsatisfactory; and

3 (ii) The notification constitutes a regulatory action level event
4 with respect to such carrier; or

5 (c) That the carrier has failed to adhere to its RBC plan or
6 revised RBC plan and that such failure has a substantial adverse effect
7 on the ability of the carrier to eliminate the company action level
8 event with respect to the carrier in accordance with its RBC plan or
9 revised RBC plan; or

10 (d) Of a corrective order with respect to the carrier.

11 (2) The carrier shall notify the commissioner of its request for a
12 hearing within five days after the notification by the commissioner
13 under this section. Upon receipt of the carrier's request for a
14 hearing, the commissioner shall set a date for the hearing. The date
15 shall be no less than ten nor more than thirty days after the date of
16 the carrier's request.

17 NEW SECTION. **Sec. 8.** (1) All RBC reports, to the extent the
18 information therein is not required to be set forth in a publicly
19 available annual statement schedule, and RBC plans, including the
20 results or report of any examination or analysis of a carrier and any
21 corrective order issued by the commissioner, with respect to any
22 domestic carrier or foreign carrier that are filed with the
23 commissioner constitute information that might be damaging to the
24 carrier if made available to its competitors, and therefore shall be
25 kept confidential by the commissioner. This information shall not be
26 made public or be subject to subpoena, other than by the commissioner
27 and then only for the purpose of enforcement actions taken by the
28 commissioner.

29 (2) The comparison of a carrier's total adjusted capital to any of
30 its RBC levels is a regulatory tool that may indicate the need for
31 possible corrective action with respect to the carrier, and is not a
32 means to rank carriers generally. Therefore, except as otherwise
33 required under the provisions of sections 1 through 14 of this act, the
34 making, publishing, disseminating, circulating, or placing before the
35 public, or causing, directly or indirectly, to be made, published,
36 disseminated, circulated, or placed before the public, in a newspaper,
37 magazine, or other publication, or in the form of a notice, circular,
38 pamphlet, letter, or poster, or over any radio or television station,

1 or in any other way, an advertisement, announcement, or statement
2 containing an assertion, representation, or statement with regard to
3 the RBC levels of any carrier, or of any component derived in the
4 calculation, by any carrier, agent, broker, or other person engaged in
5 any manner in the insurance business would be misleading and is
6 therefore prohibited. However, if any materially false statement with
7 respect to the comparison regarding a carrier's total adjusted capital
8 to its RBC levels (or any of them) or an inappropriate comparison of
9 any other amount to the carrier's RBC levels is published in any
10 written publication and the carrier is able to demonstrate to the
11 commissioner with substantial proof the falsity of such statement, or
12 the inappropriateness, as the case may be, then the carrier may publish
13 an announcement in a written publication if the sole purpose of the
14 announcement is to rebut the materially false statement.

15 (3) The RBC instructions, RBC reports, adjusted RBC reports, RBC
16 plans, and revised RBC plans are intended solely for use by the
17 commissioner in monitoring the solvency of carriers and the need for
18 possible corrective action with respect to carriers and shall not be
19 used by the commissioner for ratemaking nor considered or introduced as
20 evidence in any rate proceeding nor used by the commissioner to
21 calculate or derive any elements of an appropriate premium level or
22 rate of return for any line of insurance that a carrier or any
23 affiliate is authorized to write.

24 NEW SECTION. **Sec. 9.** (1) The provisions of sections 1 through 14
25 of this act are supplemental to any other provisions of the laws and
26 rules of this state, and shall not preclude or limit any other powers
27 or duties of the commissioner under such laws and rules, including, but
28 not limited to, chapter 48.31 RCW.

29 (2) The commissioner may adopt reasonable rules necessary for the
30 implementation of sections 1 through 14 of this act.

31 NEW SECTION. **Sec. 10.** (1) Any foreign or alien carrier shall,
32 upon the written request of the commissioner, submit to the
33 commissioner an RBC report as of the end of the calendar year just
34 ended by the later of:

35 (a) The date an RBC report would be required to be filed by a
36 domestic carrier under sections 1 through 14 of this act; or

1 (b) Fifteen days after the request is received by the foreign or
2 alien carrier. Any foreign or alien carrier shall, at the written
3 request of the commissioner, promptly submit to the commissioner a copy
4 of any RBC plan that is filed with the insurance commissioner of any
5 other state.

6 (2) In the event of a company action level event, regulatory action
7 level event, or authorized control level event with respect to any
8 foreign or alien carrier as determined under the RBC statute applicable
9 in the state of domicile of the carrier or, if no RBC statute is in
10 force in that state, under the provisions of sections 1 through 14 of
11 this act, if the insurance commissioner of the state of domicile of the
12 foreign or alien carrier fails to require the foreign or alien carrier
13 to file an RBC plan in the manner specified under that state's RBC
14 statute or, if no RBC statute is in force in that state, under section
15 3 of this act, the commissioner may require the foreign or alien
16 carrier to file an RBC plan with the commissioner. In this event, the
17 failure of the foreign or alien carrier to file an RBC plan with the
18 commissioner is grounds to order the carrier to cease and desist from
19 writing new insurance business in this state.

20 (3) In the event of a mandatory control level event with respect to
21 any foreign or alien carrier, if no domiciliary receiver has been
22 appointed with respect to the foreign or alien carrier under the
23 rehabilitation and liquidation statute applicable in the state of
24 domicile of the foreign or alien carrier, the commissioner may apply
25 for an order under RCW 48.31.080 or 48.31.090 to conserve the assets
26 within this state of foreign or alien carriers, and the occurrence of
27 the mandatory control level event is considered adequate grounds for
28 the application.

29 NEW SECTION. **Sec. 11.** There is no liability on the part of, and
30 no cause of action shall arise against, the commissioner or insurance
31 department or its employees or agents for any action taken by them in
32 the performance of their powers and duties under sections 1 through 14
33 of this act.

34 NEW SECTION. **Sec. 12.** All notices by the commissioner to a
35 carrier that may result in regulatory action are effective upon
36 dispatch if transmitted by registered or certified mail, or in the case

1 of any other transmission, are effective upon the carrier's receipt of
2 such notice.

3 NEW SECTION. **Sec. 13.** For RBC reports to be filed by carriers
4 commencing operations after the effective date of this act, those
5 carriers shall calculate the initial RBC levels using financial
6 projections, considering managed care arrangements, for its first full
7 year in operation. Such projections, including the risk-based capital
8 requirement, must be included as part of a comprehensive business plan
9 that is submitted as part of the application for registration under RCW
10 48.44.040 and 48.46.030. The resulting RBC requirement shall be
11 reported in the first RBC report submitted under section 2 of this act.
12 For subsequent reports, the RBC results using actual financial data
13 shall be included.

14 NEW SECTION. **Sec. 14.** Sections 1 through 14 of this act shall not
15 apply to a carrier which is subject to the provisions of RCW 48.05.430
16 through 48.05.490.

17 **Sec. 15.** RCW 48.42.040 and 1983 c 36 s 4 are each amended to read
18 as follows:

19 Any person or entity unable to show that it is subject to the
20 jurisdiction and regulation of another agency of this state, any
21 subdivision thereof, or the federal government, shall be subject to all
22 appropriate provisions of this title regarding the conduct of its
23 business including, but not limited to, sections 1 through 14 of this
24 act.

25 NEW SECTION. **Sec. 16.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act are each
30 added to chapter 48.43 RCW.

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