

SB 5241 - S AMD 578  
By Senator Mullet

OUT OF ORDER 02/08/2024

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that:

4 (1) The existence of accessible and affordable health care  
5 services that are responsive to the needs of the community is an  
6 important public policy goal.

7 (2) The COVID-19 pandemic laid bare both the crucial importance  
8 of our health care systems and the inequities that exist and  
9 exacerbate harm to marginalized communities, including in access to  
10 and delivery of affordable, quality care.

11 (3) Health entity mergers, acquisitions, and contracting  
12 affiliations impact cost, quality, and access to health care, and  
13 affect working conditions and employee benefits.

14 (4) Health entity mergers, acquisitions, and contracting  
15 affiliations have been shown to result in anticompetitive  
16 consequences, including higher prices and a lack of any meaningful  
17 choice among health care providers within a community or geographic  
18 region. These negative outcomes are exacerbated for those in rural  
19 areas with few health care providers.

20 (5) The legislature is committed to ensuring that Washingtonians  
21 have access to the full range of reproductive, end-of-life, and  
22 gender affirming health care services. Yet, Washingtonians continue  
23 to experience difficulty accessing gender affirming care, and health  
24 entity mergers and acquisitions in Washington state have resulted in  
25 material reductions in reproductive and end-of-life health care  
26 services, to the detriment of communities and patients.

27 (6) Health entity mergers, acquisitions, and contracting  
28 affiliations must improve rather than harm access to affordable  
29 quality health care.

30 **Sec. 2.** RCW 19.390.010 and 2019 c 267 s 1 are each amended to  
31 read as follows:

1       (1) It is the intent of the legislature to ensure that  
2 competition beneficial to consumers in health care markets across  
3 Washington remains vigorous and robust and that health care be  
4 affordable and accessible. The legislature supports ~~((that intent))~~  
5 these intents through this chapter, which provides the attorney  
6 general with notice of all material health care transactions in this  
7 state so that the attorney general has the information necessary to  
8 determine whether an investigation under the consumer protection act  
9 is warranted for potential anticompetitive conduct and consumer harm.  
10 This chapter is intended to supplement the federal Hart-Scott-Rodino  
11 antitrust improvements act, Title 15 U.S.C. Sec. 18a, by requiring  
12 notice of transactions not reportable under Hart-Scott-Rodino  
13 reporting thresholds and by providing the attorney general with a  
14 copy of any filings made pursuant to the Hart-Scott-Rodino act. In  
15 addition to ensuring vigorous and robust competition in health care  
16 markets, this chapter is also intended to ensure material change  
17 transactions result in the affected communities having the same or  
18 greater access to quality, affordable care, including emergency care,  
19 primary care, reproductive care, end-of-life care including services  
20 provided in accordance with chapter 70.245 RCW, and gender affirming  
21 care.

22       (2) Notwithstanding the language in this chapter regarding the  
23 attorney general's authority to determine the effect of a material  
24 change transaction on access to care, nothing in this chapter is  
25 intended to derogate from or otherwise affect in any way the attorney  
26 general's authority to conduct an investigation, or the process of  
27 any investigation, under chapter 19.86 RCW. Nothing in this section  
28 is intended to change or affect in any way any substantive law  
29 regarding the antitrust analysis of a material change transaction.

30       **Sec. 3.** RCW 19.390.020 and 2019 c 267 s 2 are each amended to  
31 read as follows:

32       The definitions in this section apply throughout this chapter  
33 unless the context clearly requires otherwise.

34       (1) "Acquisition" means an agreement, arrangement, or activity  
35 the consummation of which results in a person acquiring directly or  
36 indirectly the control of another person, and includes the  
37 acquisition of voting securities and noncorporate interests, such as  
38 assets, capital stock, membership interests, or equity interests.

39       (2) "Carrier" means the same as in RCW 48.43.005.

1 (3) "Contracting affiliation" means the formation of a  
2 relationship between two or more entities that permits the entities  
3 to negotiate jointly with carriers or third-party administrators over  
4 rates for professional medical services, or for one entity to  
5 negotiate on behalf of the other entity with carriers or third-party  
6 administrators over rates for professional medical services.  
7 "Contracting affiliation" does not include arrangements among  
8 entities under common ownership.

9 (4) "Gender affirming care" means a service or product that a  
10 health care provider, as defined in RCW 70.02.010, prescribes to an  
11 individual to treat any condition related to the individual's gender  
12 identity and is prescribed in accordance with generally accepted  
13 standards of care. Gender affirming care must be covered in a manner  
14 compliant with the federal mental health parity and addiction equity  
15 act of 2008 and the federal patient protection and affordable care  
16 act of 2010. Gender affirming care can be prescribed to two spirit,  
17 transgender, nonbinary, intersex, and other gender diverse  
18 individuals.

19 (5) "Health care services" means medical, surgical, chiropractic,  
20 hospital, optometric, podiatric, pharmaceutical, ambulance, mental  
21 health, substance use disorder, therapeutic, preventative,  
22 diagnostic, curative, rehabilitative, palliative, custodial, and any  
23 other services relating to the prevention, cure, or treatment of  
24 illness, injury, or disease. Health care services may be provided  
25 virtually, on-demand, or in brick and mortar settings.

26 ~~((+5))~~ (6) "Health care services revenue" means the total  
27 revenue received for health care services in the previous twelve  
28 months.

29 ~~((+6))~~ (7) "Health maintenance organization" means an  
30 organization receiving a certificate of registration pursuant to  
31 chapter 48.46 RCW which provides comprehensive health care services  
32 to enrolled participants of such organization on a group practice per  
33 capita prepayment basis or on a prepaid individual practice plan,  
34 except for an enrolled participant's responsibility for copayments  
35 and deductibles, either directly or through contractual or other  
36 arrangements with other institutions, entities, or persons, and which  
37 qualifies as a health maintenance organization pursuant to RCW  
38 48.46.030 and 48.46.040.

39 ~~((+7))~~ (8) "Hospital" means a facility licensed under chapter  
40 70.41 or 71.12 RCW.

1       ~~((8))~~ (9) "Hospital system" means:

2       (a) A parent corporation of one or more hospitals and any entity  
3 affiliated with such parent corporation through ownership or control;  
4 or

5       (b) A hospital and any entity affiliated with such hospital  
6 through ownership.

7       ~~((9))~~ (10) "Merger" means a consolidation of two or more  
8 organizations, including two or more organizations joining through a  
9 common parent organization or two or more organizations forming a new  
10 organization, but does not include a corporate reorganization.

11       ~~((10))~~ (11) "Person" means, where applicable, natural persons,  
12 corporations, trusts, and partnerships.

13       ~~((11))~~ (12) "Provider" means a natural person who practices a  
14 profession identified in RCW 18.130.040.

15       ~~((12))~~ (13) "Provider organization" means a corporation,  
16 partnership, business trust, association, or organized group of  
17 persons, whether incorporated or not, which is in the business of  
18 health care delivery or management and that represents seven or more  
19 health care providers in contracting with carriers or third-party  
20 administrators for the payments of health care services. A "provider  
21 organization" includes physician organizations, physician-hospital  
22 organizations, independent practice associations, provider networks,  
23 and accountable care organizations.

24       ~~((13))~~ (14) "Reproductive health care" means any medical  
25 services or treatments, including pharmaceutical and preventive care  
26 services or treatments, directly involved in the reproductive system  
27 and its processes, functions, and organs involved in reproduction, in  
28 all stages of life.

29       (15) "Services that are the subject of a voter-approved  
30 initiative" means reproductive services that are the subject of the  
31 reproductive privacy act established pursuant to Initiative Measure  
32 No. 120, approved November 5, 1991, or death with dignity services  
33 that are the subject of the Washington death with dignity act  
34 established pursuant to Initiative Measure No. 1000, approved  
35 November 4, 2008.

36       (16) "Third-party administrator" means an entity that administers  
37 payments for health care services on behalf of a client in exchange  
38 for an administrative fee.

39       (17) "Transaction that may limit service" means a business  
40 transaction between two or more parties, whether by acquisition,

1 contracting affiliation, or merger that will, foreseeably as of the  
2 time of the transaction, directly cause a meaningful reduction to  
3 access in Washington state to the provision of gender-affirming care  
4 or to the provision of services that are the subject of a voter-  
5 approved initiative.

6 **Sec. 4.** RCW 19.390.030 and 2019 c 267 s 3 are each amended to  
7 read as follows:

8 (1) Not less than (~~sixty~~) 60 days prior to the effective date  
9 of any transaction that results in a material change, the parties to  
10 the transaction shall submit written notice to the attorney general  
11 of such material change transaction.

12 (2) For the purposes of this (~~section~~) chapter, a material  
13 change transaction includes a merger, acquisition, or contracting  
14 affiliation (~~between two or more entities of the following types~~)  
15 involving at least one of the following entities:

- 16 (a) Hospitals;
- 17 (b) Hospital systems; or
- 18 (c) Provider organizations.

19 (3) A material change transaction includes proposed changes  
20 identified in subsection (2) of this section between a Washington  
21 entity and an out-of-state entity where the out-of-state entity  
22 generates (~~ten million dollars~~) \$10,000,000 or more in health care  
23 services revenue from patients residing in Washington state, and the  
24 entities are of the types identified in subsection (2) of this  
25 section. Any party to a material change transaction that is licensed  
26 or operating in Washington state shall submit a notice as required  
27 under this section.

28 (4) For purposes of subsection (2) of this section, a merger,  
29 acquisition, or contracting affiliation between two or more  
30 hospitals, hospital systems, or provider organizations only qualifies  
31 as a material change transaction if the hospitals, hospital systems,  
32 or provider organizations did not previously have common ownership or  
33 a contracting affiliation.

34 **Sec. 5.** RCW 19.390.040 and 2019 c 267 s 4 are each amended to  
35 read as follows:

36 (1) The written notice provided by the parties, as required by  
37 RCW 19.390.030, must include:

1 (a) The names of the parties and their current business  
2 addresses;

3 (b) Identification of all locations where health care services  
4 are currently provided by each party;

5 (c) A brief description of the nature and purpose of the proposed  
6 material change transaction; (~~and~~)

7 (d) The anticipated effective date of the proposed material  
8 change transaction; and

9 (e) If applicable, a statement that explains the effect the  
10 material change transaction will foreseeably, as of the time of the  
11 transaction, have on access in Washington state to the provision of  
12 gender-affirming care or access to the provision of services that are  
13 the subject of a voter-approved initiative, and the basis for this  
14 explanation.

15 (2) Nothing in this section prohibits the parties to a material  
16 change transaction from voluntarily providing additional information  
17 to the attorney general.

18 **Sec. 6.** RCW 19.390.050 and 2019 c 267 s 5 are each amended to  
19 read as follows:

20 ~~((The))~~ For the purpose of conducting an investigation under  
21 chapter 19.86 RCW or federal antitrust laws, the attorney general  
22 shall make any requests for additional information from the parties  
23 under RCW 19.86.110 within (~~thirty~~) 30 days of the date notice is  
24 received under RCW 19.390.030 and 19.390.040. (~~Nothing~~) Regardless  
25 of whether the attorney general requests additional information from  
26 the parties, nothing in this section precludes the attorney general  
27 from conducting an investigation or enforcing any state or federal  
28 ~~((antitrust))~~ laws at a later date.

29 NEW SECTION. **Sec. 7.** (1) The attorney general shall determine  
30 if the notice required under RCW 19.390.030 and 19.390.040 is  
31 complete for the purposes of review. If the attorney general  
32 determines that a notice is incomplete, it shall notify the parties  
33 within 10 working days after the date the notice was received stating  
34 the reasons for its determination of incompleteness.

35 (2) A completed notice shall be deemed received on the date when  
36 all the information required by RCW 19.390.040 has been submitted to  
37 the attorney general's office.

1 (3) For all material change transactions included under RCW  
2 19.390.040, the attorney general shall, within five working days  
3 after receipt of a completed notice, include information about the  
4 notice on the attorney general's website and in a newspaper of  
5 general circulation in the county or counties where communities  
6 impacted by the material change transaction are located. In addition,  
7 the attorney general shall notify by first-class United States mail,  
8 email, or facsimile transmission, any person who has requested notice  
9 of the filing of such notices. The information must state that a  
10 notice has been received, state the names of the parties to the  
11 material change transaction, describe the contents of the written  
12 notice in clear and simple terms, and state the date and process by  
13 which a person may submit written comments about the notice to the  
14 attorney general's office.

15 (4) The attorney general is not required to make public any  
16 information submitted pursuant to its investigative authority under  
17 chapter 19.86 RCW, or any information or analysis associated with an  
18 investigation under chapter 19.86 RCW.

19 NEW SECTION. **Sec. 8.** (1) The attorney general shall review the  
20 statement provided under RCW 19.390.040(1)(e) to determine whether  
21 the material change transaction meets the definition of a transaction  
22 that may limit service.

23 (2) A health care entity may not engage in a transaction that may  
24 limit service without first receiving the approval of the attorney  
25 general under this section.

26 (3)(a) If the attorney general determines the material change  
27 transaction meets the definition of a transaction that may limit  
28 service, the attorney general shall notify the parties within 10  
29 working days after the date of receiving a completed notice and  
30 require a health care entity that is a party to the transaction that  
31 may limit service complete an application on a form developed by the  
32 attorney general that includes the following information:

33 (i) The names of the parties;

34 (ii) A brief description of the transaction that may limit  
35 service, including the geographic areas impacted; and

36 (iii) The health care entity's proposed plan to address the  
37 reduction to access to the provision of gender-affirming health care  
38 or services that are the subject of a voter-approved initiative.

1 (b) The materials submitted pursuant to this subsection are  
2 considered public records for purposes of chapter 42.56 RCW.

3 (4) (a) The attorney general, in consultation with the department  
4 of health, shall determine if the application required under  
5 subsection (3) of this section is complete for the purposes of  
6 review. If the attorney general determines that an application is  
7 incomplete, it shall notify the parties within five working days  
8 after the date the application was received stating the reasons for  
9 its determination of incompleteness.

10 (b) Completed applications shall be deemed received on the date  
11 when all the information required under subsection (3) of this  
12 section has been submitted to the attorney general's office.

13 (c) For all transactions that may limit service, the attorney  
14 general shall, within five working days after receipt of an  
15 application, include information about the statement required under  
16 RCW 19.390.040(1)(e) and the application submitted under subsection  
17 (3) of this section on the attorney general's website and in a  
18 newspaper of general circulation in the county or counties where  
19 communities impacted by the material change transaction are located.  
20 In addition, the attorney general shall notify by first-class United  
21 States mail, email, or fax any person who has requested notice of the  
22 filing of such notices. The information must state that a notice of a  
23 material change transaction has been received, state the names of the  
24 parties to the transaction that may limit service, describe the  
25 contents of the written notice and application under subsection (3)  
26 of this section in clear and simple terms, and state the date and  
27 process by which a person may submit written comments to the attorney  
28 general's office.

29 (5) During the course of review under this chapter, the attorney  
30 general may conduct up to two public hearings, at least one of which  
31 must be in the geographic service area impacted by the transaction  
32 that may limit service. At a hearing, anyone may file written  
33 comments and exhibits or appear and make a statement. The attorney  
34 general may subpoena additional information or witnesses, require and  
35 administer oaths, require sworn statements, take depositions, and use  
36 related discovery procedures for purposes of the hearing and at any  
37 time prior to making a decision on the transaction. A hearing must be  
38 held not later than 30 days after receipt of the completed materials  
39 submitted pursuant to this subsection. All hearings must be completed



1 within 60 days. At least 10 days' public notice must be given before  
2 the holding of a hearing.

3 (6) The attorney general shall provide the department of health  
4 with a copy of materials received pursuant to subsection (3) of this  
5 section upon receiving it. The department of health shall review the  
6 materials, and within 30 days of the first public hearing held under  
7 subsection (5) of this section shall provide a written opinion to the  
8 attorney general as to whether or not the materials submitted meets  
9 the requirements for approval under subsection (7) of this section.

10 (7) (a) Within 30 days after receiving the written opinion of the  
11 department of health under subsection (6) of this section, the  
12 attorney general shall:

13 (i) Approve the transaction, with or without any specific  
14 modifications or conditions; or

15 (ii) Disapprove the transaction.

16 (b) The attorney general shall only approve a transaction that  
17 may limit service if it is determined the transaction will not  
18 meaningfully negatively affect access to gender-affirming care or  
19 services that are the subject of a voter-approved initiative, or the  
20 health care entity has taken the proper steps to address such  
21 reduction in access to these services such that the transaction that  
22 may limit service will not meaningfully affect the continued  
23 existence of accessible service. To this end, the department of  
24 health may not issue an opinion that recommends approval by the  
25 attorney general of the transaction unless, at a minimum, it  
26 determines that:

27 (i) Access to gender-affirming care or services that are the  
28 subject of a voter-approved initiative will not be meaningfully  
29 affected; or

30 (ii) Sufficient safeguards are included to assure continued  
31 access to services within the health care entity's service area and  
32 that alternative sources of care are available in the community.

33 (c) The attorney general may not make its decision subject to any  
34 condition not directly related to the requirements in this  
35 subsection, and any condition or modification, including the cost  
36 associated with such condition or modification, must be reasonable  
37 and bear a direct and rational relationship to the application under  
38 review. The decision must also take into account whether disapproval  
39 of a plan may lead to health care service disruption.

1 (8) A health care entity engaged in a transaction subject to this  
2 section and affected by a final decision of the attorney general has  
3 the right to an adjudicative proceeding under chapter 34.05 RCW. The  
4 opinion of the department of health provided under subsection (6) of  
5 this section may not constitute a final decision for purposes of  
6 review.

7 (9) The attorney general or the department of health may extend,  
8 by not more than 30 days, any deadline established under this chapter  
9 one time during consideration of any application, for good cause.

10 (10) The attorney general may require periodic reports from the  
11 parties identified in the approved application where specific  
12 modifications or conditions were imposed to ensure compliance with  
13 the approved application made for a period of not more than three  
14 years.

15 (11) The attorney general shall charge fees sufficient to cover  
16 the costs of implementing this section. The fees must include the  
17 cost of the department of health's review and opinion under  
18 subsection (6) of this section. The attorney general shall transfer  
19 this portion of the fee, upon receipt, to the department of health.

20 **Sec. 9.** RCW 19.390.070 and 2019 c 267 s 7 are each amended to  
21 read as follows:

22 ~~((Information))~~ (1) Except as provided in subsection (2) of this  
23 section, information submitted to the attorney general pursuant to  
24 this chapter shall be maintained and used by the attorney general in  
25 the same manner and under the same protections as provided in RCW  
26 19.86.110. The information, including documentary material, answers  
27 to written interrogatories, or transcripts of oral testimony produced  
28 pursuant to a demand or copies, must not, unless otherwise ordered by  
29 a superior court for good cause shown, be produced for inspection or  
30 copying pursuant to chapter 42.56 RCW by the person who produced the  
31 material, answered written interrogatories or gave oral testimony.

32 (2) All materials provided pursuant to section 8 of this act and  
33 all materials provided during public hearings held pursuant to  
34 section 8 of this act are considered public records for purposes of  
35 chapter 42.56 RCW.

36 (3) Nothing in this chapter limits the attorney general's  
37 authority under RCW 19.86.110 or 19.86.115. Nothing in this chapter  
38 expands the attorney general's authority under chapter 19.86 RCW,

1 federal or state antitrust law, or any other law. Failure to comply  
2 with this chapter does not provide a private cause of action.

3 NEW SECTION. **Sec. 10.** If a material change transaction is also  
4 subject to review under chapter 70.38 or 70.45 RCW, the review under  
5 those chapters shall be concurrent with the review under this  
6 chapter, to the extent practicable.

7 NEW SECTION. **Sec. 11.** Every four years, the attorney general  
8 shall commission a study of the impact of material change  
9 transactions in Washington state. The study must review material  
10 change transactions occurring during the previous four-year period  
11 and include an analysis of:

12 (1) The impact on costs to consumers and health sponsors for  
13 health care; and

14 (2) Any increases or decreases in the quality of care, including:

15 (a) Improvement or reductions in morbidity;

16 (b) Improvement or reductions in the management of population  
17 health;

18 (c) Improvement or reductions in access to emergency care  
19 services, primary care services, reproductive health care services,  
20 gender affirming care services, and end-of-life care services  
21 including services provided in accordance with chapter 70.245 RCW;  
22 and

23 (d) Changes to health and patient outcomes, particularly for  
24 underserved and uninsured individuals, recipients of medical  
25 assistance and other low-income individuals, and individuals living  
26 in rural areas, as measured by nationally recognized measures of the  
27 quality of health care, such as measures used or endorsed by the  
28 national committee for quality assurance, the national quality forum,  
29 the physician consortium for performance improvement, or the agency  
30 for health care research and quality.

31 (3) The attorney general shall commission the first study under  
32 this section no later than January 1, 2028.

33 NEW SECTION. **Sec. 12.** (1) By January, 2026, the attorney  
34 general shall complete a study on the impact of health care mergers  
35 and acquisitions in Washington state involving health carriers as  
36 defined in RCW 48.43.005, private entities, hospitals, hospital  
37 systems, or provider organizations. The study shall include:

1 (a) The impact on costs to consumers and health sponsors for  
2 health care; and  
3 (b) Any increases or decreases in the quality of care, including:  
4 (i) Improvement or reductions in morbidity;  
5 (ii) Improvement or reductions in the management of population  
6 health;  
7 (iii) Improvement or reductions in access to emergency care  
8 services, primary care services, reproductive health care services,  
9 gender affirming care services, and end-of-life care services  
10 including services provided in accordance with chapter 70.245 RCW;  
11 and  
12 (iv) Changes to health and patient outcomes, particularly for  
13 underserved and uninsured individuals, recipients of medical  
14 assistance and other low-income individuals, and individuals living  
15 in rural areas, as measured by nationally recognized measures of the  
16 quality of health care, such as measures used or endorsed by the  
17 national committee for quality assurance, the national quality forum,  
18 the physician consortium for performance improvement, or the agency  
19 for health care research and quality.  
20 (2) This section expires July 1, 2026.

21 NEW SECTION. **Sec. 13.** This act may be known and cited as the  
22 keep our care act.

23 NEW SECTION. **Sec. 14.** Sections 7, 8, 10, 11, and 13 of this act  
24 are each added to chapter 19.390 RCW.

25 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2025."

**SB 5241 - S AMD 578**  
By Senator Mullet

**OUT OF ORDER 02/08/2024**

26 On page 1, line 2 of the title, after "marketplace;" strike the  
27 remainder of the title and insert "amending RCW 19.390.010,  
28 19.390.020, 19.390.030, 19.390.040, 19.390.050, and 19.390.070;  
29 adding new sections to chapter 19.390 RCW; creating new sections;  
30 providing an effective date; and providing an expiration date."

EFFECT: (1) Adds definitions of "transaction that may limit service" and "services that are the subject of a voter-approved initiative."

(2) Broadens material change transactions to include transactions in which one party is a hospital, health system, or provider group.

(3) Requires pretransaction notice of a material change transaction to be provided to the attorney general 60 days prior to the effective date of the transaction.

(4) Requires written notice of a material change transaction to include, if applicable, a statement that explains the effect the material change transaction will foreseeably, as of the time of the transaction, have on access in Washington State to the provision of gender-affirming care or access to the provision of services that are the subject of a voter-approved initiative, and the basis for this explanation.

(5) Establishes a requirement and process for attorney general approval of transactions that may limit service.

(6) The attorney general must review material change transactions notices to determine if the material change transaction is also a transaction that may limit service.

(7) A party to a transaction that may limit service must submit an application to the attorney general, including a plan to address reduction in access to the provision of gender-affirming care or services that are the subject of a voter-approved initiative (the Reproductive Privacy Act and the Death with Dignity Act). The party must receive approval from the attorney general before engaging in a transaction that may limit service.

(8) The attorney general must provide public notice, an opportunity for public comment, and hold up to two public hearings, at least one of which must be in the geographic service area impacted by the transaction that may limit service.

(9) The department of health must provide a written opinion regarding the transaction that may limit service.

(10) The attorney general must approve (with or without modifications or conditions) or deny a party's application based on whether the transaction that may limit service will or will not meaningfully affect access or the party to the transaction will provide sufficient safeguards to assure continued access.

(11) Information submitted in the application related to a transaction that may limit service and materials provided during public hearings are subject to the public records act.

(12) Requires three years of periodic reports to the attorney general from parties to an approved application for a transaction that may limit service.

(13) Removes new requirements relating to hospitals and health systems, including requirements to submit additional documentation and explanations relating to all material change transactions, elements of attorney general process and review, and 10 years of monitoring.

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