

4/3/97 Unfinished Business
Calendar
4/29/97 Referred to Labor Comm.

MAR 14 1997

Place On Calendar

HOUSE FILE 639
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 202)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to workers' compensation by repealing the second
2 injury compensation Act, eliminating the second injury fund,
3 providing for the resolution of claims against the fund,
4 including the imposition of an employer surcharge, and
5 providing an effective date.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 639

1 Section 1. Section 85.31, subsection 5, Code 1997, is
2 amended to read as follows:

3 5. Except as otherwise provided by treaty, whenever, under
4 the provisions of this chapter and chapters 86 and 87,
5 compensation is payable to a dependent who is an alien not
6 residing in the United States at the time of the injury, the
7 employer shall be required to pay fifty percent of the
8 compensation herein otherwise provided to such dependent, ~~and~~
9 ~~the other fifty percent shall be paid into the second injury~~
10 ~~fund in the custody of the treasurer of state.~~ But However,
11 if the nonresident alien dependent is a citizen of a
12 government having a compensation law which excludes citizens
13 of the United States, either resident or nonresident, from
14 partaking of the benefits of such law in as favorable degree
15 as herein extended to the nonresident alien, ~~then said the~~
16 ~~compensation which would otherwise~~ shall not be payable to
17 such dependent ~~shall be paid into the second injury fund in~~
18 ~~the custody of the treasurer of state.~~

19 Sec. 2. Section 85.36, subsection 9, paragraph c,
20 unnumbered paragraph 2, Code 1997, is amended by striking the
21 unnumbered paragraph.

22 Sec. 3. Section 85.55, Code 1997, is amended to read as
23 follows:

24 85.55 WAIVERS PROHIBITED -- PHYSICAL DEFECTS.

25 No employee or dependent to whom this chapter applies,
26 shall have power to waive any of the provisions of this
27 chapter in regard to the amount of compensation which may be
28 payable to such employee or dependent hereunder. However, any
29 person who has some physical defect which increases the risk
30 of injury, may, subject to the approval of the industrial
31 commissioner, enter into a written agreement with the
32 employee's employer waiving compensation for injuries which
33 may occur directly or indirectly because of such physical
34 defect, ~~provided, however, that such waiver shall not affect~~
35 ~~the employee's benefits to be paid from the second injury fund~~

1 ~~under the provisions of section 85.64.~~

2 Sec. 4. Section 85.63, Code 1997, is amended by striking
3 the section and inserting in lieu thereof the following:

4 85.63 PRIOR INJURIES -- PERMANENT TOTAL DISABILITY.

5 If an employee who has previously lost, or lost the use of,
6 one hand, one arm, one foot, one leg, or one eye becomes
7 permanently disabled by a compensable injury resulting in the
8 loss or loss of use of another such member or organ, and the
9 combination of the losses results in the employee being
10 permanently and totally disabled, the employee may be entitled
11 to recover from the employer benefits for a permanent total
12 disability as provided by section 85.34, subsection 3.

13 Sec. 5. Section 85A.7, subsection 3, Code 1997, is amended
14 to read as follows:

15 3. When such occupational disease causes the death of an
16 employee and there are no dependents entitled to compensation,
17 then the employer shall pay the medical, hospital and burial
18 expenses as is provided by the workers' compensation law, ~~and~~
19 ~~shall also pay to the treasurer of the state for the use and~~
20 ~~benefit of the second injury compensation fund such amount as~~
21 ~~is required by the second injury compensation law.~~

22 Sec. 6. Section 86.12, unnumbered paragraph 1, Code 1997,
23 is amended to read as follows:

24 The industrial commissioner may require any employer to
25 supply the information required by section 86.10 or to file a
26 report required by section 86.11, by written demand sent to
27 the employer's last known address. Upon failure to supply
28 such information or file such report within twenty days, the
29 employer may be ordered to appear and show cause why the
30 employer should not be subject to civil penalty of one hundred
31 dollars for each occurrence. Upon such hearing, the
32 industrial commissioner shall enter a finding of fact and may
33 enter an order requiring such penalty to be paid into the
34 second injury general fund ~~created by sections 85.63 to 85.69~~
35 of the state. In the event the civil penalty assessed is not

1 voluntarily paid the industrial commissioner may file a
2 certified copy of such finding and order with the clerk of the
3 court for the district in which the employer maintains a place
4 of business. If the employer maintains no place of business
5 in this state service shall be made as provided in chapter 85
6 for nonresident employers. In such case the finding and order
7 may be filed in any court of competent jurisdiction within
8 this state.

9 Sec. 7. 1996 Iowa Acts, chapter 1211, section 25,
10 subsections 3 and 4, are amended to read as follows:

11 3. The surcharges collected pursuant to this section shall
12 be deposited in the second injury compensation claims fund
13 established in section 9 of this Act.

14 4. The administrative costs and expenses incurred by the
15 treasurer of state, the attorney general, the second injury
16 compensation claims fund, or the department of revenue and
17 finance, in connection with the second injury compensation
18 claims fund, may be paid from the fund to the extent
19 authorized by ~~1995-Iowa-Acts, chapter 2197, section 257, and~~
20 this section. However, the payment of administrative costs
21 and expenses incurred by the treasurer of state, the attorney
22 general, the second injury compensation claims fund, and the
23 department of revenue and finance, as authorized in this
24 subsection, shall only be permitted for administrative costs
25 and expenses incurred in the fiscal year commencing July 1,
26 1996, and ending June 30, 1997, and shall not exceed \$170,000.

27 Sec. 8. 1996 Iowa Acts, chapter 1211, section 25,
28 subsection 6, paragraph a, is amended to read as follows:

29 a. If an insurer, policyholder, or self-insurer withdraws
30 from doing business in this state before the surcharges
31 authorized by this section become due, or fails or neglects to
32 pay the surcharge imposed, the treasurer of state shall at
33 once proceed to collect the surcharge, and may employ such
34 legal process as may be necessary for that purpose, and when
35 so collected shall deposit the surcharge into the second

1 injury compensation claims fund. The treasurer may bring the
2 suit in any court of this state having jurisdiction, and
3 reasonable attorney's fees may be taxed as costs in the suit.

4 Sec. 9. DISPOSITION OF SECOND INJURY FUND CLAIMS --
5 SURCHARGE.

6 1. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A
7 second injury compensation claims fund is created within the
8 office of the treasurer of state. The second injury
9 compensation claims fund is to be used to pay claims involving
10 the second injury compensation Act. The treasurer of state
11 shall be charged with the conservation of the assets of the
12 second injury compensation claims fund and the collection of
13 contributions to the fund. The attorney general shall appoint
14 a staff member to represent the treasurer of state and the
15 fund in all proceedings and matters pertaining to the fund.
16 Upon the effective date of this Act, moneys in the second
17 injury fund shall be transferred to the second injury
18 compensation claims fund.

19 2. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

20 a. Prior to each fiscal year commencing on or after the
21 effective date of this Act, the commissioner of insurance
22 shall examine claims in which there has been an agreement for
23 settlement or an award has been made involving the second
24 injury compensation Act and shall determine the outstanding
25 liability of such claims. The commissioner of insurance shall
26 continue to examine claims as required by this section until
27 all outstanding liabilities involving the second injury
28 compensation Act are retired.

29 b. For each fiscal year commencing on or after the
30 effective date of this Act and for subsequent fiscal years,
31 the commissioner of insurance may adopt by rule, pursuant to
32 chapter 17A, a surcharge on employers pursuant to the
33 requirements of this section and payable to the second injury
34 compensation claims fund if, pursuant to its annual
35 examination of claims, the commissioner of insurance

1 determines that insufficient funds are available in the second
2 injury compensation claims fund to pay claims involving the
3 second injury compensation Act. The surcharge shall apply to
4 all workers' compensation insurance policies and self-
5 insurance coverages of employers approved for self-insurance
6 by the commissioner of insurance pursuant to section 87.4 or
7 87.11, and to the state of Iowa, its departments, divisions,
8 agencies, commissions, and boards, or any political
9 subdivision coverages whether insured or self-insured. The
10 surcharge shall not apply to any reinsurance or retrocessional
11 transaction under section 520.4 or 520.9. The commissioner of
12 insurance shall base the surcharge for each payor upon the
13 payor's pro rata share of weekly benefits paid in the state
14 during the immediately preceding fiscal year. The
15 commissioner of insurance may use reports of weekly benefits
16 paid derived from the last completed policy or reporting year,
17 or other consistent allocation methodology. The surcharge is
18 collectible by an insurer or from its policyholders if the
19 insured employer fails to pay the insurer. An insurance
20 carrier, its agent, or a third-party administrator shall not
21 be entitled to any portion of the surcharge as a fee or
22 commission for its collection. The surcharge is not subject
23 to any taxes, licenses, or fees. The surcharge is not deemed
24 to be an assessment or tax, but shall be deemed an additional
25 benefit paid for injuries compensable under the second injury
26 compensation Act.

27 3. FINAL DISPOSITION OF CLAIMS. The industrial
28 commissioner of the department of workforce development, in
29 cooperation with the treasurer of state, shall resolve claims
30 involving the second injury compensation Act as soon as
31 possible through payment methods, such as, but not limited to,
32 entering into lump sum settlements or purchasing of annuities.

33 4. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each
34 fiscal year commencing on or after the effective date of this
35 Act and for subsequent fiscal years, the attorney general

1 shall not be compensated for administrative expenses incurred
2 in connection with the second injury compensation claims fund.

3 Sec. 10. Sections 85.64, 85.65, 85.66, 85.67, 85.68, and
4 85.69, Code 1997, are repealed.

5 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
6 immediate importance, takes effect upon enactment.

7

EXPLANATION

8 This bill repeals the second injury compensation Act. The
9 second injury compensation Act provides that an employee who
10 had previously lost the use of one hand, arm, foot, leg, or
11 eye would be entitled to compensation for that loss from a
12 separate second injury fund if the employee subsequently
13 becomes permanently disabled by the loss of another member or
14 organ which is compensable under workers' compensation
15 provisions. Under current law, the employer is only liable
16 for the degree of disability which resulted from the latter
17 injury as if the previous injury did not occur. This bill
18 provides that if the employee who had previously lost the use
19 of one hand, arm, foot, leg, or eye becomes permanently
20 disabled by the loss of another such member or organ, and the
21 combination of the losses results in the employee being
22 totally disabled, the employee is entitled to recover from the
23 employer benefits for a permanent total disability.

24 The bill also establishes the process for settling unpaid
25 claims and settlements arising out of the second injury
26 compensation Act. The bill establishes a second injury
27 compensation claims fund with the treasurer of state for
28 payment of claims arising out of the second injury
29 compensation Act and provides that any moneys in the second
30 injury fund shall be transferred to this new fund.

31 The bill also directs the commissioner of insurance to
32 examine the claims involving the second injury compensation
33 Act and determine the outstanding liability for such claims.
34 The bill provides that if the commissioner of insurance
35 determines that there are insufficient funds in the second

1 injury compensation claims fund to pay claims, the
2 commissioner of insurance may impose, by rule, a surcharge on
3 employers. The surcharge shall apply to all workers'
4 compensation insurance policies and self-insurance coverages
5 of employers approved for self-insurance by the commissioner
6 of insurance and to the state of Iowa, its departments,
7 divisions, agencies, commissions, and boards, or any political
8 subdivision coverages whether insured or self-insured. The
9 bill provides that this examination and surcharge process
10 shall continue until the outstanding debt arising out of the
11 second injury compensation Act is retired.

12 The bill also directs the industrial commissioner, in
13 cooperation with the treasurer of state, to resolve to final
14 disposition claims involving the second injury compensation
15 Act as soon as possible through payment methods, such as, but
16 not limited to, entering into lump sum settlements or
17 purchasing of annuities. In addition, the attorney general
18 shall not be compensated from the second injury compensation
19 claims fund for administrative expenses incurred in connection
20 with the fund.

21 The bill takes effect upon enactment.

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HOUSE FILE 639

H-1518

1 Amend House File 639 as follows:

2 1. Page 2, by striking lines 4 through 12 and
3 inserting the following:

4 "85.63 CUMULATIVE INJURIES -- COMPENSATION.

5 1. If an employee has previously lost or lost the
6 use of one hand, one arm, one foot, one leg, or one
7 eye, which constitutes a functional impairment to the
8 enumerated member of five percent or more, and the
9 employee becomes permanently disabled by a compensable
10 injury which has resulted in the loss of or loss of
11 use of another such member or organ, the employer
12 shall be liable to the employee for compensation for
13 the degree of disability which would have resulted
14 from the latter injury if there had been no pre-
15 existing disability, and such additional compensation,
16 if applicable, as provided in subsection 2.

17 2. If the difference in the number of weeks of
18 compensation that would otherwise be payable for the
19 degree of permanent disability involved for the prior
20 and latter injuries exceeds the total of the number of
21 weeks of compensation that would have been payable for
22 the previous loss of use of a member or organ and the
23 number of weeks of compensation payable for the latter
24 injury by thirty-seven and one-half or more weeks,
25 then the employee shall also be entitled to
26 compensation from the employer for the number of weeks
27 representing this difference after the expiration of
28 the full period provided by law for compensation for
29 the latter injury."

30 2. Title page, line 4, by inserting after the
31 word "surcharge," the following: "providing for
32 employee compensation for certain cumulative
33 injuries,".

34 3. By renumbering as necessary.

By TAYLOR of Linn

H-1518 FILED APRIL 1, 1997

Lombardi, Ch
Lukup
Taylor

HSB 202

LABOR & INDUSTRIAL RELATIONS

Succeeded By
SF/HE 639

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON LABOR
AND INDUSTRIAL RELATIONS
BILL BY CHAIRPERSON TYRRELL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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2 injury compensation Act, eliminating the second injury fund,
3 providing for the resolution of claims against the fund,
4 including the imposition of an employer surcharge, and
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6 residing in the United States at the time of the injury, the
7 employer shall be required to pay fifty percent of the
8 compensation herein otherwise provided to such dependent,~~and~~
9 ~~the other fifty percent shall be paid into the second injury~~
10 ~~fund in the custody of the treasurer of state.~~ But However,
11 if the nonresident alien dependent is a citizen of a
12 government having a compensation law which excludes citizens
13 of the United States, either resident or nonresident, from
14 partaking of the benefits of such law in as favorable degree
15 as herein extended to the nonresident alien, ~~then said the~~
16 compensation ~~which would otherwise~~ shall not be payable to
17 such dependent ~~shall be paid into the second injury fund in~~
18 ~~the custody of the treasurer of state.~~

19 Sec. 2. Section 85.36, subsection 9, paragraph c,
20 unnumbered paragraph 2, Code 1997, is amended by striking the
21 unnumbered paragraph.

22 Sec. 3. Section 85.55, Code 1997, is amended to read as
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25 No employee or dependent to whom this chapter applies,
26 shall have power to waive any of the provisions of this
27 chapter in regard to the amount of compensation which may be
28 payable to such employee or dependent hereunder. However, any
29 person who has some physical defect which increases the risk
30 of injury, may, subject to the approval of the industrial
31 commissioner, enter into a written agreement with the
32 employee's employer waiving compensation for injuries which
33 may occur directly or indirectly because of such physical
34 defect,~~provided, however, that such waiver shall not affect~~
35 ~~the employee's benefits to be paid from the second injury fund~~

1 ~~under the provisions of section 85.64.~~

2 Sec. 4. Section 85.63, Code 1997, is amended by striking
3 the section and inserting in lieu thereof the following:

4 85.63 PRIOR INJURIES -- PERMANENT TOTAL DISABILITY.

5 If an employee who has previously lost, or lost the use of,
6 one hand, one arm, one foot, one leg, or one eye becomes
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9 combination of the losses results in the employee being
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12 disability as provided by section 85.34, subsection 3.

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16 employee and there are no dependents entitled to compensation,
17 then the employer shall pay the medical, hospital and burial
18 expenses as is provided by the workers' compensation law, and
19 ~~shall also pay to the treasurer of the state for the use and~~
20 ~~benefit of the second injury compensation fund such amount as~~
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25 supply the information required by section 86.10 or to file a
26 report required by section 86.11, by written demand sent to
27 the employer's last known address. Upon failure to supply
28 such information or file such report within twenty days, the
29 employer may be ordered to appear and show cause why the
30 employer should not be subject to civil penalty of one hundred
31 dollars for each occurrence. Upon such hearing, the
32 industrial commissioner shall enter a finding of fact and may
33 enter an order requiring such penalty to be paid into the
34 second-injury general fund ~~created by sections 85.63 to 85.69~~
35 of the state. In the event the civil penalty assessed is not

1 voluntarily paid the industrial commissioner may file a
2 certified copy of such finding and order with the clerk of the
3 court for the district in which the employer maintains a place
4 of business. If the employer maintains no place of business
5 in this state service shall be made as provided in chapter 85
6 for nonresident employers. In such case the finding and order
7 may be filed in any court of competent jurisdiction within
8 this state.

9 Sec. 7. 1996 Iowa Acts, chapter 1211, section 25,
10 subsections 3 and 4, are amended to read as follows:

11 3. The surcharges collected pursuant to this section shall
12 be deposited in the second injury compensation claims fund
13 established in section 9 of this Act.

14 4. The administrative costs and expenses incurred by the
15 treasurer of state, the attorney general, the second injury
16 compensation claims fund, or the department of revenue and
17 finance, in connection with the second injury compensation
18 claims fund, may be paid from the fund to the extent
19 authorized by ~~1995-Iowa-Acts, chapter 219, section 25, and~~
20 this section. However, the payment of administrative costs
21 and expenses incurred by the treasurer of state, the attorney
22 general, the second injury compensation claims fund, and the
23 department of revenue and finance, as authorized in this
24 subsection, shall only be permitted for administrative costs
25 and expenses incurred in the fiscal year commencing July 1,
26 1996, and ending June 30, 1997, and shall not exceed \$170,000.

27 Sec. 8. 1996 Iowa Acts, chapter 1211, section 25,
28 subsection 6, paragraph a, is amended to read as follows:

29 a. If an insurer, policyholder, or self-insurer withdraws
30 from doing business in this state before the surcharges
31 authorized by this section become due, or fails or neglects to
32 pay the surcharge imposed, the treasurer of state shall at
33 once proceed to collect the surcharge, and may employ such
34 legal process as may be necessary for that purpose, and when
35 so collected shall deposit the surcharge into the second

1 injury compensation claims fund. The treasurer may bring the
2 suit in any court of this state having jurisdiction, and
3 reasonable attorney's fees may be taxed as costs in the suit.

4 Sec. 9. DISPOSITION OF SECOND INJURY FUND CLAIMS --
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6 1. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A
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10 the second injury compensation Act. The treasurer of state
11 shall be charged with the conservation of the assets of the
12 second injury compensation claims fund and the collection of
13 contributions to the fund. The attorney general shall appoint
14 a staff member to represent the treasurer of state and the
15 fund in all proceedings and matters pertaining to the fund.
16 Upon the effective date of this Act, moneys in the second
17 injury fund shall be transferred to the second injury
18 compensation claims fund.

19 2. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

20 a. Prior to each fiscal year commencing on or after the
21 effective date of this Act, the commissioner of insurance
22 shall examine claims in which there has been an agreement for
23 settlement or an award has been made involving the second
24 injury compensation Act and shall determine the outstanding
25 liability of such claims. The commissioner of insurance shall
26 continue to examine claims as required by this section until
27 all outstanding liabilities involving the second injury
28 compensation Act are retired.

29 b. For each fiscal year commencing on or after the
30 effective date of this Act and for subsequent fiscal years,
31 the commissioner of insurance may adopt by rule, pursuant to
32 chapter 17A, a surcharge on employers pursuant to the
33 requirements of this section and payable to the second injury
34 compensation claims fund if, pursuant to its annual
35 examination of claims, the commissioner of insurance

1 determines that insufficient funds are available in the second
2 injury compensation claims fund to pay claims involving the
3 second injury compensation Act. The surcharge shall apply to
4 all workers' compensation insurance policies and self-
5 insurance coverages of employers approved for self-insurance
6 by the commissioner of insurance pursuant to section 87.4 or
7 87.11, and to the state of Iowa, its departments, divisions,
8 agencies, commissions, and boards, or any political
9 subdivision coverages whether insured or self-insured. The
10 surcharge shall not apply to any reinsurance or retrocessional
11 transaction under section 520.4 or 520.9. The commissioner of
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13 payor's pro rata share of weekly benefits paid in the state
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29 cooperation with the treasurer of state, shall resolve claims
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32 entering into lump sum settlements or purchasing of annuities.

33 4. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each
34 fiscal year commencing on or after the effective date of this
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1 shall not be compensated for administrative expenses incurred
2 in connection with the second injury compensation claims fund.

3 Sec. 10. Sections 85.64, 85.65, 85.66, 85.67, 85.68, and
4 85.69, Code 1997, are repealed.

5 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
6 immediate importance, takes effect upon enactment.

7 EXPLANATION

8 This bill repeals the second injury compensation Act. The
9 second injury compensation Act provides that an employee who
10 had previously lost the use of one hand, arm, foot, leg, or
11 eye would be entitled to compensation for that loss from a
12 separate second injury fund if the employee subsequently
13 becomes permanently disabled by the loss of another member or
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18 provides that if the employee who had previously lost the use
19 of one hand, arm, foot, leg, or eye becomes permanently
20 disabled by the loss of another such member or organ, and the
21 combination of the losses results in the employee being
22 totally disabled, the employee is entitled to recover from the
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24 The bill also establishes the process for settling unpaid
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5 of employers approved for self-insurance by the commissioner
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7 divisions, agencies, commissions, and boards, or any political
8 subdivision coverages whether insured or self-insured. The
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10 shall continue until the outstanding debt arising out of the
11 second injury compensation Act is retired.

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