

SECOND REGULAR SESSION

HOUSE BILL NO. 2309

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUNTER.

Read 1st time February 28, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5158L.02I

AN ACT

To repeal sections 287.020, 287.200, 287.220, 287.230, 287.430, and 287.715, RSMo, and to enact in lieu thereof six new sections relating to workers' compensation, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.020, 287.200, 287.220, 287.230, 287.430, and 287.715, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 287.020, 287.200, 287.220, 287.230, 287.430, and 287.715, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. **Except as otherwise provided in this chapter**, any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 operating under a certificate issued by the Missouri department of transportation or by the United
14 States Department of Transportation, or any of its subagencies.

15 2. The word "accident" as used in this chapter shall mean an unexpected traumatic event
16 or unusual strain identifiable by time and place of occurrence and producing at the time objective
17 symptoms of an injury caused by a specific event during a single work shift. An injury is not
18 compensable because work was a triggering or precipitating factor.

19 3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen
20 out of and in the course of employment. An injury by accident is compensable only if the
21 accident was the prevailing factor in causing both the resulting medical condition and disability.
22 "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing
23 both the resulting medical condition and disability.

24 (2) An injury shall be deemed to arise out of and in the course of the employment only
25 if:

26 (a) It is reasonably apparent, upon consideration of all the circumstances, that the
27 accident is the prevailing factor in causing the injury; and

28 (b) It does not come from a hazard or risk unrelated to the employment to which workers
29 would have been equally exposed outside of and unrelated to the employment in normal
30 nonemployment life.

31 (3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

32 (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular
33 accident or myocardial infarction suffered by a worker is an injury only if the accident is the
34 prevailing factor in causing the resulting medical condition.

35 (5) The terms "injury" and "personal injuries" shall mean violence to the physical
36 structure of the body and to the personal property which is used to make up the physical structure
37 of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other
38 prostheses which are placed in or on the body to replace the physical structure and such disease
39 or infection as naturally results therefrom. These terms shall in no case except as specifically
40 provided in this chapter be construed to include occupational disease in any form, nor shall they
41 be construed to include any contagious or infectious disease contracted during the course of the
42 employment, nor shall they include death due to natural causes occurring while the worker is at
43 work.

44 4. "Death" when mentioned as a basis for the right to compensation means only death
45 resulting from such violence and its resultant effects occurring within three hundred weeks after
46 the accident; except that in cases of occupational disease, the limitation of three hundred weeks
47 shall not be applicable.

48 5. Injuries sustained in company-owned or subsidized automobiles in accidents that
49 occur while traveling from the employee's home to the employer's principal place of business or
50 from the employer's principal place of business to the employee's home are not compensable.
51 The extension of premises doctrine is abrogated to the extent it extends liability for accidents that
52 occur on property not owned or controlled by the employer even if the accident occurs on
53 customary, approved, permitted, usual or accepted routes used by the employee to get to and
54 from their place of employment.

55 6. The term "total disability" as used in this chapter shall mean inability to return to any
56 employment and not merely mean inability to return to the employment in which the employee
57 was engaged at the time of the accident.

58 7. As used in this chapter and all acts amendatory thereof, the term "commission" shall
59 hereafter be construed as meaning and referring exclusively to the labor and industrial relations
60 commission of Missouri, and the term "director" shall hereafter be construed as meaning the
61 director of the department of insurance of the state of Missouri or such agency of government
62 as shall exercise the powers and duties now conferred and imposed upon the department of
63 insurance of the state of Missouri.

64 8. The term "division" as used in this chapter means the division of workers'
65 compensation of the department of labor and industrial relations of the state of Missouri.

66 9. For the purposes of this chapter, the term "minor" means a person who has not
67 attained the age of eighteen years; except that, for the purpose of computing the compensation
68 provided for in this chapter, the provisions of section 287.250 shall control.

69 10. In applying the provisions of this chapter, it is the intent of the legislature to reject
70 and abrogate earlier case law interpretations on the meaning of or definition of "accident",
71 "occupational disease", "arising out of", and "in the course of the employment" to include, but
72 not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d
73 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and
74 Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying,
75 or following those cases.

287.200. 1. Compensation for permanent total disability shall be paid during the
2 continuance of such disability for the lifetime of the employee at the weekly rate of
3 compensation in effect under [this] subsection **2 of this section** on the date of the injury for
4 which compensation is being made[. The amount of such compensation shall be computed as
5 follow] , **with the following exceptions:**

6 (1) **Benefits payable under this section shall terminate when the employee is eligible**
7 **to receive full Social Security retirement benefits under the Social Security Act or other**
8 **retirement benefits in lieu of Social Security retirement benefits. If an employee began**

9 receiving Social Security retirement benefits or other benefits in lieu of Social Security
10 retirement benefits before the occurrence of the compensable injury, the employee may
11 receive permanent total disability benefits for up to two years after the date of occurrence
12 of the injury by accident or occupational disease during which time the benefits would be
13 offset by an amount equal to fifty percent of the employee's weekly Social Security
14 retirement benefits or other benefits in lieu of Social Security retirement benefits;

15 (2) Permanent total disability benefits that have accrued, paid or unpaid, through
16 the date of the injured employee's death shall be the only permanent total disability
17 benefits that are to be paid in accordance with section 287.230. Permanent total disability
18 of an injured employee terminates on the date of the injured employee's death in
19 accordance with section 287.230 and shall not survive to the injured employee's
20 dependents, estate, or other persons to whom compensation might otherwise be payable.
21 As used in this section the word "employee" shall not include the injured worker's
22 dependents, estate, or other persons to whom compensation may be payable as provided
23 in subsection 1 of section 287.020;

24 (3) All claims for permanent total disability shall be determined in accordance with
25 the facts. When an injured employee receives an award for permanent total disability and
26 the employee at any time thereafter is able to compete for employment in the open labor
27 market or returns to work, the life payment as described in subsection 1 of this section
28 shall terminate. The commission shall retain jurisdiction in the case during the lifetime of
29 any injured employee who has received an award of permanent total disability.

30 **2. The amount of such compensation shall be computed as follows:**

31 (1) For all injuries occurring on or after September 28, 1983, but before September 28,
32 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
33 the injured employee's average weekly earnings during the year immediately preceding the
34 injury, as of the date of the injury; provided that the weekly compensation paid under this
35 subdivision shall not exceed an amount equal to seventy percent of the state average weekly
36 wage, as such wage is determined by the division of employment security, as of the July first
37 immediately preceding the date of injury;

38 (2) For all injuries occurring on or after September 28, 1986, but before August 28,
39 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of
40 the injured employee's average weekly earnings during the year immediately preceding the
41 injury, as of the date of the injury; provided that the weekly compensation paid under this
42 subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly
43 wage, as such wage is determined by the division of employment security, as of the July first
44 immediately preceding the date of injury;

45 (3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991,
46 the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the
47 injured employee's average weekly earnings as of the date of the injury; provided that the weekly
48 compensation paid under this subdivision shall not exceed an amount equal to one hundred
49 percent of the state average weekly wage;

50 (4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall
51 be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly
52 earnings as of the date of the injury; provided that the weekly compensation paid under this
53 subdivision shall not exceed an amount equal to one hundred five percent of the state average
54 weekly wage;

55 (5) For all injuries occurring on or after September 28, 1981, the weekly compensation
56 shall in no event be less than forty dollars per week.

57 [2. All claims for permanent total disability shall be determined in accordance with the
58 facts. When an injured employee receives an award for permanent total disability but by the use
59 of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular
60 work or its equivalent, the life payment mentioned in subsection 1 of this section shall be
61 suspended during the time in which the employee is restored to his regular work or its equivalent.
62 The employer and the division shall keep the file open in the case during the lifetime of any
63 injured employee who has received an award of permanent total disability. In any case where
64 the life payment is suspended under this subsection, the commission may at reasonable times
65 review the case and either the employee or the employer may request an informal conference
66 with the commission relative to the resumption of the employee's weekly life payment in the
67 case.]

287.220. 1. All cases of permanent disability where there has been previous disability
2 shall be compensated as herein provided. Compensation shall be computed on the basis of the
3 average earnings at the time of the last injury. If any employee who has a preexisting permanent
4 partial disability whether from compensable injury or otherwise, of such seriousness as to
5 constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee
6 becomes unemployed, [and the preexisting permanent partial disability, if a body as a whole
7 injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only,
8 equals a minimum of fifteen percent permanent partial disability, according to the medical
9 standards that are used in determining such compensation, receives] **sustains** a subsequent
10 compensable injury resulting in additional permanent partial disability so that the degree or
11 percentage of disability, [in an amount equal to a minimum of fifty weeks compensation, if a
12 body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent
13 permanent partial disability,] caused by the combined disabilities is substantially greater than that

14 which would have resulted from the last injury, considered alone and of itself, [and if the
15 employee is entitled to receive compensation on the basis of the combined disabilities,] the
16 employer at the time of the last injury shall be liable only for the degree or percentage of
17 disability which would have resulted from the last injury had there been no preexisting disability.
18 After the compensation liability of the employer for the last injury, considered alone, has been
19 determined by an administrative law judge or the commission, [the degree or percentage of
20 employee's disability that is attributable to all injuries or conditions existing at the time the last
21 injury was sustained shall then be determined by that administrative law judge or by the
22 commission and the degree or percentage of disability which existed prior to the last injury plus
23 the disability resulting from the last injury, if any, considered alone, shall be deducted from the
24 combined disability, and compensation for the balance, if any, shall be paid out of a special fund
25 known as the second injury fund, hereinafter provided for.] if the previous disability or
26 disabilities, whether from compensable injury or otherwise, and the last injury together result in
27 [total and] permanent **and total** disability, [the minimum standards under this subsection for a
28 body as a whole injury or a major extremity injury shall not apply and] the employer at the time
29 of the last injury shall be liable only for the disability resulting from the last injury considered
30 alone and of itself; except that if the compensation for which the employer at the time of the last
31 injury is liable is less than the compensation provided in this chapter for permanent total
32 disability, then in addition to the compensation for which the employer is liable and after the
33 completion of payment of the compensation by the employer, the employee shall be paid the
34 remainder of the compensation that would be due for permanent total disability under section
35 287.200 **and no other disability provided for in this chapter** out of a special fund known as
36 the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided
37 and for special weekly benefits in rehabilitation cases as provided in section 287.141. **No**
38 **compensation for permanent partial disability from the second injury fund shall be**
39 **payable if there is jurisdiction in another state due to the employee's injury by accident or**
40 **occupational disease.** Maintenance of the second injury fund shall be as provided by section
41 287.710. The state treasurer shall be the custodian of the second injury fund which shall be
42 deposited the same as are state funds and any interest accruing thereon shall be added thereto.
43 The fund shall be subject to audit the same as state funds and accounts and shall be protected by
44 the general bond given by the state treasurer. Upon the requisition of the director of the division
45 of workers' compensation, warrants on the state treasurer for the payment of all amounts payable
46 for compensation and benefits out of the second injury fund shall be issued.

47 2. In all cases in which a recovery against the second injury fund is sought for
48 [permanent partial disability,] permanent total disability[,] or **in the case of the death of the**
49 **employee of an uninsured employer as provided in subsection 5 of this section,** the state

50 treasurer as custodian thereof shall be named as a party, and shall be entitled to defend against
51 the claim. The state treasurer, with the advice and consent of the attorney general of Missouri,
52 may enter into compromise settlements as contemplated by section 287.390, or agreed statements
53 of fact that would affect the second injury fund. All awards for [permanent partial disability,]
54 permanent total disability[,], or death affecting the second injury fund shall be subject to the
55 provisions of this chapter governing review and appeal. For all claims filed against the second
56 injury fund on or after July 1, 1994, the attorney general shall use assistant attorneys general
57 except in circumstances where an actual or potential conflict of interest exists, to provide legal
58 services as may be required in all claims made for recovery against the fund. Any legal expenses
59 incurred by the attorney general's office in the handling of such claims, including, but not limited
60 to, medical examination fees, expert witness fees, court reporter expenses, travel costs, and
61 related legal expenses shall be paid by the fund. Effective July 1, 1993, the payment of such
62 legal expenses shall be contingent upon annual appropriations made by the general assembly,
63 from the fund, to the attorney general's office for this specific purpose.

64 3. If more than one injury in the same employment causes concurrent temporary
65 disabilities, compensation shall be payable only for the longest and largest paying disability.

66 4. If more than one injury in the same employment causes concurrent and consecutive
67 permanent partial disability, compensation payments for each subsequent disability shall not
68 begin until the end of the compensation period of the prior disability.

69 5. If an employer fails to insure or self-insure as required in section 287.280, funds from
70 the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses
71 to cure and relieve the effects of the injury or disability of an injured employee in the employ of
72 an uninsured employer, or in the case of death of an employee in the employ of an uninsured
73 employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and
74 necessary expenses in the manner required in sections 287.240 and 287.241; **except that no**
75 **such funds shall be withdrawn if there is jurisdiction in another state due to the employee's**
76 **injury by accident or occupational disease.** In defense of claims arising under this subsection,
77 the treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same
78 defenses to such claims as would the uninsured employer. Any funds received by the employee
79 or the employee's dependents, through civil or other action, must go towards reimbursement of
80 the second injury fund, for all payments made to the employee, the employee's dependents, or
81 paid on the employee's behalf, from the second injury fund pursuant to this subsection. The
82 office of the attorney general of the state of Missouri shall bring suit in the circuit court of the
83 county in which the accident occurred against any employer not covered by this chapter as
84 required in section 287.280.

85 6. Every three years the second injury fund shall have an actuarial study made to
86 determine the solvency of the fund, appropriate funding level of the fund, and forecasted
87 expenditures from the fund. The first actuarial study shall be completed prior to July 1, 1988.
88 The expenses of such actuarial studies shall be paid out of the fund for the support of the division
89 of workers' compensation.

90 7. The director of the division of workers' compensation shall maintain the financial data
91 and records concerning the fund for the support of the division of workers' compensation and the
92 second injury fund. The division shall also compile and report data on claims made pursuant to
93 subsection 9 of this section. The attorney general shall provide all necessary information to the
94 division for this purpose.

95 8. All claims for fees and expenses filed against the second injury fund and all records
96 pertaining thereto shall be open to the public.

97 9. Any employee who at the time a compensable work-related injury is sustained is
98 employed by more than one employer, the employer for whom the employee was working when
99 the injury was sustained shall be responsible for wage loss benefits applicable only to the
100 earnings in that employer's employment and the injured employee shall be entitled to file a claim
101 against the second injury fund for any additional wage loss benefits attributed to loss of earnings
102 from the employment or employments where the injury did not occur, up to the maximum
103 weekly benefit less those benefits paid by the employer in whose employment the employee
104 sustained the injury. The employee shall be entitled to a total benefit based on the total average
105 weekly wage of such employee computed according to subsection 8 of section 287.250. The
106 employee shall not be entitled to a greater rate of compensation than allowed by law on the date
107 of the injury. The employer for whom the employee was working where the injury was sustained
108 shall be responsible for all medical costs incurred in regard to that injury.

287.230. 1. The death of the injured employee shall not affect the liability of the
2 employer to furnish compensation as in this chapter provided, so far as the liability has accrued
3 and become payable at the time of the death, and any accrued and unpaid compensation due the
4 employee shall be paid to his dependents without administration, or if there are no dependents,
5 to his personal representative or other persons entitled thereto, but the death shall be deemed to
6 be the termination of the disability.

7 2. Where an employee is entitled to compensation under this chapter, **exclusive of**
8 **compensation as provided for in section 287.200**, for an injury received and death ensues for
9 any cause not resulting from the injury for which [he] **the employee** was entitled to
10 compensation, [payments of the unpaid accrued compensation shall be paid, but] payments of
11 the unpaid unaccrued [balance] **compensation under section 287.190 and no other**

12 **compensation** for the injury shall [cease and all liability therefor shall terminate unless there are]
13 **be paid to the** surviving dependents at the time of death.

14 **3. In applying the provisions of this chapter, it is the intent of the legislature to**
15 **reject and abrogate the holding in Schoemehl v. Treasurer of the State of Missouri, 217**
16 **S.W.3d 900 (Mo. banc 2007), and all cases citing, interpreting, applying, or following this**
17 **case.**

287.430. Except for a claim for recovery filed against the second injury fund, no
2 proceedings for compensation under this chapter shall be maintained unless a claim therefor is
3 filed with the division within two years after the date of injury or death, or the last payment made
4 under this chapter on account of the injury or death, except that if the report of the injury or the
5 death is not filed by the employer as required by section 287.380, the claim for compensation
6 may be filed within three years after the date of injury, death, or last payment made under this
7 chapter on account of the injury or death. The filing of any form, report, receipt, or agreement,
8 other than a claim for compensation, shall not toll the running of the periods of limitation
9 provided in this section. The filing of the report of injury or death three years or more after the
10 date of injury, death, or last payment made under this chapter on account of the injury or death,
11 shall not toll the running of the periods of limitation provided in this section, nor shall such filing
12 reactivate or revive the period of time in which a claim may be filed. A claim **for compensation**
13 against the second injury fund shall be filed within two years after the date [of the injury or
14 within one year after a claim] **the original claim for compensation** is filed against an employer
15 [or insurer] pursuant to this chapter[, whichever is later]. **Any claims for medical fees or**
16 **expenses made under subsection 3, 4, or 13 of section 287.140 shall be filed with the**
17 **division of workers' compensation within two years of the last date of the medical**
18 **treatment or service.** In all other respects the limitations shall be governed by the law of civil
19 actions other than for the recovery of real property, but the appointment of a conservator shall
20 be deemed the termination of the legal disability from minority or disability as defined in chapter
21 475, RSMo. The statute of limitations contained in this section is one of extinction and not of
22 repose.

287.715. 1. For the purpose of providing for revenue for the second injury fund, every
2 authorized self-insurer, and every workers' compensation policyholder insured pursuant to the
3 provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with
4 the provisions of this section. The annual surcharge imposed under this section shall apply to
5 all workers' compensation insurance policies and self-insurance coverages which are written or
6 renewed on or after April 26, 1988, including the state of Missouri, including any of its
7 departments, divisions, agencies, commissions, and boards or any political subdivisions of the
8 state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any

9 law to the contrary, the surcharge imposed pursuant to this section shall not apply to any
10 reinsurance or retrocessional transaction.

11 2. Beginning October 31, 2005, and each year thereafter, the director of the division of
12 workers' compensation shall estimate the amount of benefits payable from the second injury fund
13 during the following calendar year and shall calculate the total amount of the annual surcharge
14 to be imposed during the following calendar year upon all workers' compensation policyholders
15 and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon
16 each policyholder and self-insured for the following calendar year commencing with the calendar
17 year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to
18 exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits,
19 net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half
20 of a percentage point, that shall generate, as nearly as possible, one hundred ten percent of the
21 moneys to be paid from the second injury fund in the following calendar year, less any moneys
22 contained in the fund at the end of the previous calendar year. All policyholders and self-insurers
23 shall be notified by the division of workers' compensation within ten calendar days of the
24 determination of the surcharge percent to be imposed for, and paid in, the following calendar
25 year. The net premium equivalent for individual self-insured employers and any group of
26 political subdivisions of this state qualified to self-insure their liability pursuant to this chapter
27 as authorized by section 537.620, RSMo, shall be based on average rate classifications calculated
28 by the department of insurance as taken from premium rates filed by the twenty insurance
29 companies providing the greatest volume of workers' compensation insurance coverage in this
30 state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed
31 by such group of employers in accordance with subsection 2 of section 287.280 shall be the net
32 premium equivalent. The director may advance funds from the workers' compensation fund to
33 the second injury fund if surcharge collections prove to be insufficient. [Any funds advanced
34 from the workers' compensation fund to the second injury fund must be reimbursed by the
35 second injury fund no later than December thirty-first of the year following the advance.] The
36 surcharge shall be collected from policyholders by each insurer at the same time and in the same
37 manner that the premium is collected, but no insurer or its agent shall be entitled to any portion
38 of the surcharge as a fee or commission for its collection. The surcharge is not subject to any
39 taxes, licenses or fees.

40 3. All surcharge amounts imposed by this section shall be deposited to the credit of the
41 second injury fund.

42 4. Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and
43 insurers shall pay the amounts not later than the thirtieth day of the month following the end of
44 the quarter in which the amount is received from policyholders. If the director of the division

45 of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any
46 year for the following year, any increase in the surcharge ultimately set by the director shall not
47 be effective for any calendar quarter beginning less than sixty days from the date the director
48 makes such determination.

49 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer
50 fails to make timely transfer to the division of surcharges actually collected from policyholders,
51 as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or
52 untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties
53 assessed under this subsection shall be collected in a civil action by a summary proceeding
54 brought by the director of the division of workers' compensation.

 Section B. Because of the need to clarify workers' compensation laws and preserve the
2 solvency of the workers' compensation system, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared
4 to be an emergency act within the meaning of the constitution, and section A of this act shall be
5 in full force and effect upon its passage and approval.

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