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Senate Bill 100 (as enacted)  
House Bill 5503 (as enacted)  
Sponsor: Senator Mark C. Jansen (S.B. 100)  
Representative Kenneth Kurtz (H.B. 5503)  
Senate Committee: Families and Human Services  
House Committee: Families and Children's Services

**PUBLIC ACT 193 of 2009**  
**PUBLIC ACT 194 of 2009**

Date Completed: 1-3-11

### **CONTENT**

**Senate Bill 100** amended the Support and Parenting Time Enforcement Act to do the following:

- Revise requirements for a support payer or payee to provide information to the Friend of the Court (FOC), and allow the court to impose a fee for failure to comply.
- Make it permissive for the court to add a surcharge to past due amounts if a payer willfully fails to pay support.
- Require the amount withheld from a payer's income to include any costs, fines, and sanctions.
- Limit the maximum amount of income withholding to 50% of disposable earnings.
- Require the FOC to notify the Secretary of State (SOS) if a payer fails to request or attend a license suspension hearing, require the SOS to suspend the payer's driver license, and otherwise revise provisions concerning suspension of an occupational, driver, or recreational license.
- Permit the court, in a contempt hearing for violation of a support order, to order the payer's vehicle rendered temporarily inoperable.
- Permit the court, in a contempt hearing for violation of a support order or parenting time order, to require the payer or parent to participate in certain counseling programs or other activities under

FOC supervision, and to commit the person to jail or an alternative to jail.

- Require support to be assigned to the funding county if a child for whom support is payable is placed in county-funded foster care.

**House Bill 5503** amended the Michigan Vehicle Code to do the following:

- Require the Secretary of State to suspend a payer's driver license immediately upon notice from an FOC office that the payer failed to appear for a hearing, comply with a repayment plan order, or respond to a license suspension notice.
- Require a suspension order to remain in effect until the person obtains a certificate from the FOC showing that he or she is complying with the custody, parenting time, or support order, and has paid a \$45 driver license clearance fee and the license reinstatement fee.
- For each driver license clearance fee, allocate \$15 to the Secretary of State and \$30 to the county FOC fund.

The bills were tie-barred to each other, and took effect on December 28, 2009.

### **Senate Bill 100**

#### **Support Order; Notices**

Under Section 3 of the Support and Parenting Time Enforcement Act, except as otherwise provided, every support order that

is part of a judgment issued by a Michigan court or is an order in a domestic relations matter must include a statement that the order is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of the State, and is not, on or after the date it is due, subject to retroactive modification. The bill also provides that no additional action is necessary to reduce support to a final judgment.

The bill requires every support order to include substantially the statement described above, and a statement that a surcharge may be added to support amounts that are past due as provided under the Act. (Previously, the statement had to indicate that a surcharge would be added to past due support amounts.)

The bill also requires every support order to include notice that an order for dependent health care coverage takes effect immediately and that, in an FOC case, a national medical support notice will be sent to the parent's current and subsequent employers if appropriate. The notice must inform the parent that he or she may contest the action by requesting a review or hearing concerning availability of health care coverage at a reasonable cost. (The Act previously contained a similar requirement that applied to support orders in FOC cases.)

Previously, each support order that was an order in an FOC case had to include all of the following:

- A requirement that within 21 days after the payer or payee changed his or her residential or mailing address, the individual report the new address and the telephone number in writing to the FOC.
- A requirement that both the payer and payee notify the FOC office if he or she held an occupational license or a driver license.
- The name, address, and phone number of the payer's and payee's current sources of income.
- A requirement that the payer and payee each inform the FOC office of his or her Social Security number and driver license number.

Under the bill, instead, each support order that is an order in an FOC case must require

each party to give the FOC all of the following information in writing:

- A single mailing address for the party, to which all notices and papers in the case will be served.
- The party's residential address.
- The party's phone number.
- Whether the payer or payee holds an occupational license, driver license, or recreational license.
- The names, addresses, and phone numbers of the payer's and payee's current sources of income.
- The payer's and payee's Social Security numbers and driver license numbers.

The support order also must include a requirement that, if any of this information changes, each party notify the FOC of the new information within 21 days of the change, and that failure to provide the new information may subject the party to a fee. A notice of new information under this provision must be written or given by any other method allowed under guidelines established by the State Court Administrative Office (SCAO) under the supervision and direction of the Michigan Supreme Court.

Under the bill, if a person fails to comply with the requirements of Section 3, the court may impose a fee set pursuant to a policy established by the SCAO under the supervision and direction of the Supreme Court. The fee must be deposited in the FOC fund.

Except as otherwise provided, the bill requires service of notices or other papers under the Act and under the FOC Act to be made by first class mail, postage prepaid. If mail is returned as undeliverable from that address, the FOC may change the address under guidelines established by the SCAO or the Supreme Court.

The bill provides that, unless Federal law or regulation requires otherwise, if mail served in this manner is returned from an address and a new address has not been established within 21 days after the mail is returned, the party waives his or her right to notice, and the FOC is not obligated to serve any notice or other paper until the party submits a written change of address to the FOC or until the FOC has changed the address as provided in the bill.

### Surcharge

Previously, for an FOC case, as of January 1 and July 1 of each year, the Act required a surcharge to be added to support payments that were past due as of those dates. Under the bill, instead, the court may order a surcharge to be added on those days if the court determines that the payer has failed to pay support under a support order and the failure was willful. The surcharge will apply until abated by the court.

The bill deleted a provision under which a surcharge could not be added to support ordered under the Paternity Act for the time period to the date of the support order.

### Support for Child over 18

The Support and Parenting Time Enforcement Act permits a court to order support for a child after he or she reaches the age of 18, if the child is regularly attending high school full time with a reasonable expectation to graduate while residing on a full-time basis with the recipient of support or at an institution.

Under the bill, such a support order must provide that the support terminates on the last day of a specified month, regardless of the actual graduation date.

### Refund of Support

Under the Act, if the Title IV-D agency receives a support payment that, at the time of its receipt, exceeds a payer's support amount payable plus an amount payable under an arrearage payment schedule, the agency must apply the excess against the payer's total arrearage accrued under all support orders under which the payer is obligated. If a balance remains, the agency must do one of the following:

- If the payer designates the balance as additional support, immediately disburse that amount to the recipient of support.
- If, at the time the payment is received, the payer is obligated for a future support payment and the balance is less than or equal to the monthly support payment amount, retain the balance and disburse it to the support recipient when the amount is payable.
- If, at the time the payment is received, the payer is not obligated for a future

support payment, or the payer is obligated under a support order for a future support payment but the balance is greater than the monthly support order amount, return the balance to the payer.

Under the bill, after one year following its date of enactment, if a payer has paid money that has not been disbursed to the payee, and the payer is entitled to a refund of all or part of the money because support has been abated in whole or in part, the refund must be applied first to any support past due in the case and then to any past due support the payer owes in another case. Any balance after the application to support arrearages must be refunded to the payer.

(Title IV-D of the Social Security Act deals with child support. In Michigan, the Title IV-D agency is the Office of Child Support in the Department of Human Services.)

### Support for Foster Child

Under the Act, if a child for whom support is payable under a court order is under the State's jurisdiction and is placed in foster care, support payable under the order is assigned to the Department of Human Services. Under the bill, if the child is placed in county-funded foster care, the support payable is assigned to the funding county. Each support order a court enters or modifies must include a provision to this effect.

The bill also revised the definition of "recipient of support" to include the county, if the minor child is in county-funded foster care.

### Payment Plan

Under the Act, a payer who has an arrearage under a support order may file a motion with the circuit court for a payment plan to pay arrearages and to discharge and abate arrearages. The court must approve the plan if it finds that the plan is in the best interest of the parties and children and meets certain other criteria. If the arrearage is owed to the State or a political subdivision of the State, the court must approve the plan if it will pay a reasonable portion of the arrearage over a reasonable period of time in accordance with the payer's current ability to pay, and other requirements are met.

Previously, a payment plan that did not pay the entire arrearage had to require payments for at least 24 months, for a payer with an income at or below the poverty level. For a payer with an income over the poverty level, a payment plan had to require payments for at least 24 months plus one additional month for each \$1,000 above the poverty level that the payer earned. The bill deleted these requirements.

#### Notice of Arrearage, Income Withholding

The Act requires the FOC office to send immediate notice to a payer by ordinary mail if income withholding is not effective immediately and the arrearage under a support order reaches an amount that requires the initiation of one or more support enforcement measures, or if the amount of income withholding is administratively adjusted for arrears. The notice must include the amount of the arrearage and either notice that the payer's income is subject to income withholding and the amount to be withheld, or notice that the payer's income withholding is being administratively adjusted and the amount of the adjustment, among other information.

The bill deleted a requirement that a copy of the notice be sent by ordinary mail to each recipient of support.

The Act requires a notice of income withholding to be served on the payer's sources of income. Under the bill, a labor organization that assigns a member to work must forward a copy of an income withholding notice served on the labor organization to the actual employer. The bill also includes a labor organization within the definition of "source of income" (an employer or successor employer or another individual or entity that owes or will owe income to the payer).

Under the Act, the notice must direct sources of income to withhold from income due the payer an amount sufficient to meet the payments ordered for support and service fees, and to defray arrearage payments and service fees due at the time the order of income withholding takes effect. Under the bill, the amount withheld also must be sufficient to cover any fines, costs, and sanctions.

The bill requires a person serving a notice of income withholding to send separate notices for support, fees, fines, costs, and sanctions ordered to be paid under Title IV-D and for support, fees, fines, costs, and sanctions not ordered to be paid under Title IV-D.

#### Maximum Amount of Withholding

Previously, the total amount of income withheld for support, fees, and health care premiums could not exceed the amount allowed under Section 303(b) of Title III of the Federal Consumer Credit Protection Act (15 USC 1673). Under the bill, the amount withheld for support, fees, health care premiums, fines, costs, and sanctions ordered under the FOC Act or the Support and Parenting Time Enforcement Act may not exceed 50% of the payer's disposable earnings as that term is defined in 15 USC 1672.

(Section 303(b) limits the amount of an individual's aggregate disposable earnings subject to garnishment. If earnings are garnished to enforce a support order, the maximum is 50% of the individual's disposable earnings for a work week if the individual is supporting his or her spouse or dependent child (other than a spouse or child for whom the support is used). If the individual is not supporting a spouse or dependent child, the maximum is 60% of disposable earnings for a work week. Those limits are 55% and 65%, respectively, however, if the earnings are subject to garnishment to enforce a support order for a period that is earlier than 12 weeks before the beginning of the work week.

Under 15 USC 1672, "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.)

If there is more than one order to withhold income for support, fees, or health care coverage premiums against a payer or parent, the source of income must comply with all of the income withholding notices to the extent that the total amount withheld does not exceed 50% of the payer's disposable earnings. (Previously, the source of income had to comply to the extent that the total amount withheld did not exceed the limits imposed under Section 303(b) of the Consumer Credit Protection Act.)

The bill requires the source of income to comply with the notices as follows:

- If all income withholding orders are from this State and the total amount designated in the notices to withhold income for current and past due support exceeds 50% of the payer's disposable earnings, the source of income must withhold an amount equal to that limit.
- If one or more of the orders are from another state, the source of income must give priority to amounts designated in each notice as current support, as provided in the Act.

#### Tax Offset

For an FOC case, if a support arrearage had accrued, the Act previously allowed the FOC office to request the Office of Child Support to initiate offset proceedings against the delinquent payer's State and Federal tax refunds.

Under the bill, the FOC may request the Office of Child Support to initiate offset proceedings if the case has not been designated for offset proceedings by that Office and the accrued arrearage meets the requirements established by State or Federal law, regulation, or rule, as applicable.

#### Lien on Property

The amount of past due support that accrues under a judgment made under the Act or under the law of another state constitutes a lien in favor of the support recipient against the real and personal property of a payer.

The bill deleted a provision that required the Title IV-D agency, before a lien was perfected or levied, to notify the payer of the imposition of liens by operation of law and that the payer's real and personal property could be encumbered or seized if an arrearage accrued in an amount that exceeded the amount of periodic support payments payable under the support order for the specified time period.

Under the bill, a lien may not be perfected or levied unless the Title IV-D agency has notified the payer that liens exist by operation of law and that the payer's real and personal property can be encumbered or seized if an arrearage accrues in an

amount that exceeds the periodic support payments payable under the support order for the time specified in the Act. Notice is provided if it is in the payer's support order or if it was mailed to the payer at any time.

#### Dependent Health Care Coverage

Under the Act, an order or notice of an order for dependent health care coverage served on an employer must direct the employer to withhold from the employee's income the employee's share, if any, of premiums for dependent health care coverage and pay that amount to the insurer or plan administrator.

Under the bill, the order or notice also must direct that the amount withheld for support, fees, and health care premiums not exceed 50% of the employee's disposable earnings as that term is defined in 15 USC 1672 (rather than the amount allowed under Section 303(b) of Title III of the Consumer Credit Protection Act).

#### License Suspension

Under the Support and Parenting Time Enforcement Act, as amended by the bill, a payer's occupational license, driver license, or recreational or sporting license, or any combination of the licenses may be suspended if both of the following are true:

- An arrearage has accrued in an amount greater than the amount of periodic support payments payable for two months under the payer's support order.
- An order of income withholding is not applicable or has been unsuccessful in assuring regular payments on the support obligation and regular payments on the arrearage.

Previously, for an FOC case, the FOC could petition the court for an order to suspend a payer's license under those circumstances. An FOC office could not file a petition unless it sent the payer notice of the amount of the arrearage and that the payer's occupational license, driver license, and/or recreational or sporting license could be subject to suspension. Under the bill, an FOC office must send the payer that notice before seeking the suspension of a license.

Within 21 days after the date on which notice is mailed to a payer, he or she may

request a hearing on the proposed suspension. If the payer requests a hearing within that time, a suspension order may not be entered and a suspension notice may not be sent pending the outcome of the hearing. (Previously, if the payer requested a hearing within that time, entry of the suspension order had to be delayed pending the outcome of the hearing.)

If the court determines (after a hearing, under the bill) that the payer has accrued an arrearage on his or her support order and that the payer has or could have the capacity to pay all or some of the amount due, the court must order the payment of the arrearage in one or more scheduled installments of a sum certain.

Under the bill, after 21 days after the date on which a notice of a proposed license suspension is sent, the FOC must notify the Secretary of State if the payer has failed to request or attend a hearing on the proposed suspension or pay the arrearage in full. Upon receiving the notice, the SOS must suspend the payer's driver license.

The court may order the suspension of the payer's occupational license or recreational or sporting license, or any combination of the licenses included in the notice, under either of the following circumstances:

- The payer fails to pay the arrearage and fails either to request a hearing or to appear for a hearing after such a request.
- The court determines after a hearing that the payer has failed to comply with an arrearage payment schedule ordered under the Act.

(Previously, the court could suspend a payer's occupational, driver, and/or recreational or sporting license after 21 days after a notice of a proposed license suspension was sent.)

Also, under the bill, if a court determines that a payer has failed to comply with an arrearage payment, it may direct the FOC to notify the Secretary of State of the failure. Upon receiving that notice, the SOS must suspend the payer's driver license as provided in the Michigan Vehicle Code.

If a court orders a suspension of an occupational license, driver license, or recreational or sporting license, the order

must indicate that the licensing agency is required to suspend the license within seven business days after receiving the order or (under the bill) sooner if required by the act authorizing the license suspension.

Previously, if a payer was the subject of a suspension order under these provisions and had failed to respond in any manner to the notice given, the FOC office could not send the suspension order to the licensing agency until at least 14 days after the date the office first attempted to serve a copy of the order on the payer by registered or certified mail. The bill deleted this provision.

After a suspension order is entered or (under the bill) after a suspension, a payer may agree to and the court may order a schedule for the payment of the arrearage. If the court orders a schedule for payment of the arrearage, the court must enter an order rescinding the suspension order. If applicable, the bill also requires the FOC, on verification by the court clerk that the required driver license clearance fee has been paid, to provide a certificate to the payer stating that he or she is in compliance with the support order.

#### Contempt: Failure to Pay Support

Under the Act, if a person is ordered to pay support and fails or refuses to do so, and if an income withholding order is inapplicable or unsuccessful, a recipient of support or the FOC may commence a civil contempt proceeding in the circuit court. If the payer fails to appear, the court may take one or more of several actions, including applying an enforcement remedy authorized under the Act or the FOC Act for the nonpayment of support. Under the bill, such a remedy includes suspending the payer's occupational license, driver license, or recreational or sporting license.

In addition, the bill allows the court to enter an order that a law enforcement agency render any vehicle owned by the payer temporarily inoperable, by booting or other similar method, subject to release on deposit of an appropriate bond. The court also may place the payer under the supervision of the FOC office for a term fixed by the court with reasonable conditions, including one or more of the following: participating in a parenting program, drug or alcohol counseling, or a work program;

seeking employment; participating in other counseling; continuing compliance with a current support or parenting time order; or entering into and complying with an arrearage payment plan.

Under the Act, the court may find a payer in contempt if it finds that he or she is in arrears and has the capacity to pay all or part of the amount due under the support order. Upon finding a payer in contempt, the court, among other options, may enter an order that commits the payer to the county jail, or commits the payer to the county jail with the privilege of leaving during specified hours for employment purposes. Under the bill, the court also may commit the payer to an alternative to jail.

The bill also gives the court the option to enter an order that places the payer under the supervision of the FOC office for a term fixed by the court with reasonable conditions, including one or more of those described above (i.e., participating in a parenting program, seeking employment, etc.).

In addition, under the Act, the court may find a payer in contempt if it finds that the payer is in arrears and one of the following applies:

- The court is satisfied that by the exercise of due diligence, the payer could have the capacity to pay all or some of the amount due under the support order and that the payer fails or refuses to do so.
- The payer has failed to obtain a source of income and has failed to participate in a work activity after referral by the FOC.

Upon finding a payer in contempt under that provision, the court must, absent good cause to the contrary, order the payer to participate in a work activity and also may take one or more other actions, including committing the payer to the county jail with the privilege of leaving the jail during specified hours for employment purposes. The bill also permits the court to commit the payer to an alternative to jail, and gives the court the option to enter an order placing the payer under the supervision of the FOC office for a term fixed by the court with reasonable conditions, including those described above.

Under the Act, if a payer is committed to jail with the privilege of leaving during specified hours for employment purposes and violates the conditions prescribed by the court, the court must commit the payer to the county jail without the privilege of leaving. If the payer fails to return to jail within the time prescribed, he or she is considered to have escaped from custody and is guilty of a misdemeanor, punishable by imprisonment for up to one year. Under the bill, those provisions also apply to a payer who is committed to an alternative to jail.

#### Contempt: Parenting Time

Under the Act, if the FOC office determines that a procedure other than a civil contempt proceeding is unsuccessful in resolving a dispute concerning parenting time with a minor child, the FOC office must commence a civil contempt proceeding to resolve the dispute.

If the court finds that either parent has violated a parenting time order without good cause, it must find that parent in contempt of court and may, among other options, enter an order that commits the parent to the county jail, or commits the parent to the county jail with the privilege of leaving during specified hours for employment purposes. The bill also allows the court to commit the parent to an alternative to jail.

In addition, the bill gives the court the option to enter an order placing the parent under the supervision of the FOC office for a term fixed by the court with reasonable conditions, including one or more of the following:

- Participating in a parenting program.
- Participating in drug or alcohol counseling.
- Participating in a work program.
- Seeking employment.
- Participating in other counseling.
- Continuing compliance with a current support or parenting time order.
- Entering into and complying with an arrearage payment plan.
- Facilitating makeup parenting time.

Under the Act, if a custodial parent is committed to jail with the privilege of leaving during specified hours for employment purposes and violates the conditions ordered by the court, the court

must commit the parent to the county jail without the privilege of leaving. If the parent fails to return to the place of confinement within the time prescribed, he or she is considered to have escaped and is guilty of a misdemeanor, punishable by imprisonment for up to one year. Under the bill, those provisions also apply to a custodial parent who is committed to an alternative to jail.

If a parent fails to appear in response to an order to show cause, the court may order a bench warrant requiring the parent to be brought before the court. Unless good cause is shown, the court must order the parent to pay the costs of the hearing, the issuance of the warrant, the arrest, and further hearings.

Under the bill, if the hearing cannot be held immediately after the parent is arrested, he or she may be released if a bond in the amount of the fines, costs, and sanctions imposed under the Act and any additional amount the court determines necessary to secure the parent's appearance is deposited with the court.

The Act provides that if the court finds that either parent has violated a parenting time order without good cause, and if the parent holds an occupational license, driver license, or recreational or sporting license, the court may condition the suspension of the license or any combination of the licenses upon noncompliance with an order for makeup and ongoing parenting time. If the court orders a makeup parenting time schedule, it must enter an order rescinding the suspension order.

Under the bill, if applicable, on verification by the court clerk that the driver license clearance fee has been paid, the FOC must give the payer a certificate stating that he or she is in compliance with the support order.

#### Other Provisions

The bill specifies that, in a support enforcement proceeding, a report, record, or information from the Michigan Child Support Enforcement System or the Support Disbursement Unit that relates to paid or unpaid support is prima facie authentic and may be admitted into evidence without extrinsic evidence of authenticity.

#### **House Bill 5503**

The Michigan Vehicle Code previously required the Secretary of State to suspend a licensee's operator's or chauffeur's license within seven business days after receiving a suspension order under the Support and Parenting Time Enforcement Act. The bill replaced this provision.

Under the bill, if an FOC office notifies the SOS that a licensee has failed to appear for a hearing, comply with a repayment plan order, or respond to a license suspension notice under the Support and Parenting Time Enforcement Act, the SOS must suspend the operator's or chauffeur's license of the licensee immediately and notify the licensee of the suspension by first-class mail.

Previously, an order rescinding a suspension order was effective when the court entered it and the licensee paid the reinstatement fee required under Section 320e of the Code. (Section 320e(4) requires a person whose operator's or chauffeur's license is suspended under these provisions to pay a fee of \$85 to the SOS before a license is issued or returned to the person.)

The bill provides, instead, that a suspension order remains in effect until all of the following occur:

- The person obtains a certificate from the FOC showing that he or she is complying with the custody, parenting time, or support order, and gives that certificate to the SOS within 10 days after the date it is issued.
- The person pays to the circuit court clerk a \$45 driver license clearance fee.
- The person pays the reinstatement fee imposed under Section 320e.

Unless a person's license is otherwise suspended, revoked, denied, or canceled, it must be reinstated immediately on satisfaction of those requirements. The SOS must reissue the operator's or chauffeur's license of a person whose suspension order is rescinded within 30 days after receiving the certificate from the FOC, and evidence of payment of the driver license clearance fee and the reinstatement fee.

If a person gives a copy of the certificate to the SOS more than 10 days after its date of



issuance, the certificate will no longer be valid, and the SOS may not reinstate the person's license. A person who fails to give a copy of the certificate to the SOS within 10 days must obtain another certificate from the FOC and satisfy the requirements listed above, before the SOS may reinstate his or her license.

For each driver license clearance fee received, the clerk must transmit the following amounts on a monthly basis:

- \$30 to the county treasurer, who must deposit the money in the county FOC fund.
- \$15 to the SOS, who must deposit the money in the State's General Fund.

The General Fund money must be spent to defray the expenses of the SOS in processing the suspension and reinstatement of driver licenses under these provisions.

MCL 552.602 et al. (S.B. 100)  
257.321c (H.B. 5503)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 100**

The fee for failure to comply with information requirements will result in additional revenue. Changes to the driver license suspension process will result in administrative savings.

The bill clarifies that income withholding may be used to collect fees, fines, costs, and sanctions under the Friend of the Court Act and the Support and Parenting Time Enforcement Act, which will result in an indeterminate increase in collections for local funding units.

### **House Bill 5503**

The bill requires a person whose driver license is suspended under the Support and Parenting Time Enforcement Act to pay a driver license clearance fee of \$45. The fee is in addition to the \$85 license reinstatement fee, which the Secretary of State receives for costs associated with suspending a license and removing a suspension. Of the additional \$45 fee, the

SOS receives \$15 to help with the costs associated with suspensions and removal of suspensions. In FY 2009-10, there were 2,334 transactions involving the reinstatement of driver licenses related to child support. Assuming that an estimated 2,300 cases are reinstated each year, the additional revenue to the SOS from the new driver license clearance fee will be an estimated \$34,500 annually.

The bill will have no fiscal impact on local government.

Fiscal Analyst: Bill Bowerman  
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