

FIRST REGULAR SESSION

SENATE BILL NO. 310

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 22, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0753S.011

AN ACT

To repeal sections 701.300, 701.301, 701.305, 701.309, 701.310, 701.311, 701.312, 701.313, 701.314, 701.316, 701.320, and 701.334, RSMo, and to enact in lieu thereof eleven new sections relating to lead licensing, with penalty provisions.

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

Section A. Sections 701.300, 701.301, 701.305, 701.309, 701.310, 701.311, 701.312, 701.313, 701.314, 701.316, 701.320, and 701.334, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 701.300, 701.301, 701.305, 701.309, 701.310, 701.311, 701.312, 701.313, 701.316, 701.320, and 701.334, to read as follows:

701.300. As used in sections 701.300 to 701.338, the following terms mean:

(1) "Abatement",

(a) Any measure regulated solely by the Missouri department of health and senior services designed to permanently eliminate lead hazards, which shall include:

a. The removal of lead-bearing substances, the replacement of lead-painted surfaces or fixtures, or the permanent enclosure or encapsulation of lead-bearing substances; and

b. All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures;

(b) "Abatement" shall not include any measure involving a de minimis surface area or activity excluded from this definition by rule;

(2) "Child-occupied facility", a building or portion of a building constructed prior to 1978 and visited regularly by the same child who is six or fewer years of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 age including, but not limited to, day care centers, preschools and kindergarten
17 classrooms. For the purposes of this subdivision, "visited regularly" means a
18 minimum of two visits on different days within any week, provided that each visit
19 lasts at least three hours and the combined weekly visits last at least six hours
20 and the combined annual visits last at least sixty hours;

21 (3) ["Deleading", the removal of lead-bearing substances;

22 (4)] "Department", the department of health and senior services;

23 [(5)] (4) "Deteriorated lead-bearing substance", any interior or exterior
24 lead-bearing surface coating material as defined by rule that is peeling, chipping,
25 chalking, or cracking or any lead-bearing substance located on an interior or
26 exterior surface or fixture that is damaged, deteriorated or otherwise separating
27 from the substrate or a structure component;

28 [(6) "Director", the director of the department of health and senior
29 services;

30 (7)] (5) **"Dust sampling technician", a technician who conducts**
31 **optional dust clearance sampling for renovation, with a license from**
32 **the department;**

33 (6) "Dwelling", either:

34 (a) A single-family dwelling, including attached structures such as porches
35 and stoops; or

36 (b) A single-family dwelling unit in a structure that contains more than
37 one separate residential dwelling unit and in which each such unit is used or
38 occupied or intended to be used or occupied, in whole or in part, as the home or
39 residence of one or more persons;

40 (7) **"Emergency", an unexpected event that, if not immediately**
41 **attended to, presents a safety or public health hazard or threatens**
42 **equipment or property with significant damage;**

43 (8) "Encapsulant", a liquid coating or adhesively bonded substance applied
44 to a surface to form a barrier between a lead-bearing substance and the
45 environment;

46 (9) "Encapsulation", the application of an encapsulant;

47 (10) "Enclosure", the use of rigid, durable construction materials
48 mechanically fastened to a substrate **and sealed** to act as a barrier between a
49 lead-bearing substance and the environment;

50 (11) "Health care professional", any physician, hospital, or other person
51 which is licensed or otherwise authorized in this state to furnish health care

52 services;

53 (12) "Interim control", any measure designed to temporarily reduce human
54 exposure or likely human exposure to lead hazards. Such measures may include,
55 but are not limited to, specialized cleaning, repairs, maintenance, painting,
56 temporary containment, ongoing monitoring of lead hazards or potential hazards,
57 or the establishment and operation of management and resident education
58 programs;

59 (13) ["Lead abatement contractor", a person or entity licensed by the
60 department to conduct lead-bearing substance activities at a location other than
61 the contractor's own place of business;

62 (14)] "Lead abatement project":

63 (a) The encapsulation, enclosure, **replacement**, or removal of a
64 lead-bearing substance;

65 (b) "Lead abatement project" shall not include any measure involving a
66 de minimis surface area or activity excluded from this definition by rule;

67 [(15)] (14) "Lead abatement supervisor", a person licensed by the
68 department to direct, control or supervise personnel [in] **onsite during** a lead
69 abatement project;

70 [(16)] (15) "Lead abatement worker", a person licensed by the
71 department to work on a lead abatement project;

72 [(17)] (16) "Lead-bearing substance activity", any activity associated with
73 [a] lead abatement [project including, but not limited to], project design, risk
74 assessment, [inspection, abatement or deleading] **lead inspection, or**
75 **clearance sampling** under this chapter;

76 [(18)] (17) "Lead-bearing substance",

77 (a) includes:

78 a. Any paint or other surface coating materials that contain lead equal to
79 or in excess of one milligram per square centimeter or more than five-tenths
80 percent by weight or such other standard for lead content in paint as may be
81 established by federal law or regulation;

82 b. Surface dust that contains a concentration of lead specified by rules
83 promulgated by the department that shall be consistent with the purposes of laws
84 enacted by the United States Congress and regulations promulgated or guidance
85 issued by any federal agency;

86 c. Bare soil that contains a concentration of lead specified by rules
87 promulgated by the department that shall be consistent with the purposes of laws

88 enacted by the United States Congress and regulations promulgated or guidance
89 issued by any federal agency; or

90 d. Any lead-based paint, lead-based paint hazard or lead-based paint
91 activity consistent with the purposes of laws enacted by the United States
92 Congress and regulations promulgated or guidance issued by any federal agency;
93 and

94 (b) "Lead-bearing substance" as regulated by the Missouri department of
95 health and senior services does not include any substance generated through the
96 mining, milling or smelting of lead ore or scrap, or generated through lead
97 product manufacturing or use provided that such substance has not migrated off
98 or been transported from the mining, smelting, or manufacturing site and entered
99 a residential area or any other public access environment;

100 [(19)] (18) "Lead hazard", any condition that causes exposure to lead that
101 would result in adverse human health effects from deteriorated lead-bearing
102 substances or lead-bearing substances present in "accessible surfaces", "friction
103 surfaces", or "impact surfaces", as such terms are defined in 15 U.S.C. 2681;

104 [(20)] (19) "Lead inspection", a surface-by-surface investigation to
105 determine the presence of lead-bearing substances and a report or provision of a
106 report which explains the results of such an investigation;

107 [(21)] (20) "Lead inspector", a person licensed by the department to
108 conduct lead inspections;

109 [(22)] (21) "Lead poisoning", the laboratory determination of a human
110 whole blood lead level as established by the federal Centers for Disease Control;

111 [(23)] (22) "Licensed firm", a company, partnership, corporation,
112 sole proprietorship, or individual doing business, association, or other
113 business entity, a federal, state, tribal, or local government agency or
114 nonprofit organization licensed to perform a lead-bearing substance
115 activity;

116 (23) "Minor repair and maintenance activities", activities,
117 including minor heating, ventilation or air conditioning work,
118 electrical work, and plumbing that disrupt six square feet or less of
119 painted surface per room for interior activities or twenty square feet
120 or less of painted surface for exterior activities where none of the work
121 practices prohibited or restricted by federal standards are used and
122 where the work does not involve window replacement or demolition of
123 painted surface areas. When removing painted components, or portions

124 **of painted components, the entire surface area removed is the amount**
125 **of painted surface disturbed. Jobs, other than emergency renovations,**
126 **performed in the same room within the same thirty days shall be**
127 **considered the same job for the purpose of determining whether the job**
128 **is a minor repair and maintenance activity;**

129 **(24) "Owner", any person, who alone, jointly or severally with others:**

130 **(a) Has legal title to any child-occupied facility, dwelling or dwelling unit,**
131 **with or without accompanying actual possession thereof; or**

132 **(b) Has charge, care or control of any child-occupied facility, dwelling or**
133 **dwelling unit as owner or agent of the owner, or as executor, administrator,**
134 **trustee, or guardian of, the estate of the owner;**

135 **[(24)] (25) "Project designer", a person licensed by the department to**
136 **conduct activities including, but not limited to, the development and**
137 **implementation of occupant protection plans, lead-bearing substance abatement**
138 **and hazard reduction methods, interior dust abatement and cleanup methods,**
139 **hazard control and reduction methods, clearance standards and testing protocols**
140 **and integration of lead-bearing substance abatement methods with modernization**
141 **and rehabilitation projects for lead abatement projects;**

142 **[(25)] (26) "Renovation", the modification of any existing**
143 **structure, or portion thereof, that results in the disturbance of painted**
144 **surfaces in target housing or a child-occupied facility, unless that**
145 **activity is performed as part of a lead abatement project. The term**
146 **"renovation" includes, but is not limited to:**

147 **(a) The removal, modification, or repair of painted surfaces or**
148 **painted components such as modification of painted doors, surface**
149 **preparation activity including sanding and scraping, or other such**
150 **activities that may generate paint dust;**

151 **(b) The removal of building components; or**

152 **(c) Weatherization projects and interim controls that disturb**
153 **painted surfaces.**

154 **A renovation performed for the purpose of converting a building, or**
155 **part of a building, into target housing or a child-occupied facility is a**
156 **renovation under this subdivision. "Renovation" does not include minor**
157 **repair and maintenance activities;**

158 **(27) "Renovation firm", a company, partnership, corporation, sole**
159 **proprietorship or individual doing business, association, or other**

160 **business entity, a federal, state, tribal, or local government agency or**
161 **nonprofit organization licensed to perform dust sampling or renovation**
162 **activities;**

163 **(28) "Renovator", an individual who either performs or directs**
164 **workers who perform renovations who has successfully completed a**
165 **renovator course accredited by the United States Environmental**
166 **Protection Agency or by the department;**

167 **(29) "Replacement", a lead abatement strategy that refers to the**
168 **elimination of a lead hazard by substituting a lead-bearing component**
169 **with a similar nonlead-bearing component;**

170 **(30) "Risk assessment", an on-site investigation to determine the**
171 **existence, nature, severity and location of lead hazards, and the provision of a**
172 **report by the person conducting the risk assessment explaining the results of the**
173 **investigation and options for reducing lead hazards;**

174 **[(26)] (31) "Risk assessor", a person licensed by the department to**
175 **conduct risk assessments;**

176 **[(27)] (32) "Target housing", any housing or portion of a building**
177 **used for residential purposes constructed prior to 1978, except housing**
178 **specifically set aside as senior housing or a zero unit apartment, unless**
179 **any child six years of age or less resides or is expected to reside in**
180 **such housing;**

181 **(33) "Work practice standards", requirements or standards that ensure**
182 **that lead-bearing substance abatement activities and renovation are conducted**
183 **reliably, effectively and safely.**

701.301. The department shall promulgate rules necessary to implement
2 and administer the provisions of sections 701.300 to 701.338, including
3 requirements, procedures and standards relating to lead-bearing substance
4 activities **and renovation**. The rules established by the department shall be at
5 least as protective of human health and the environment as the federal program
6 established by the Residential Lead-Based Paint Hazard Reduction Act, as
7 amended, 42 U.S.C. 4851, et seq., and the Toxic Substances Control Act, as
8 amended, 15 U.S.C. 2605, 2607, and 2681 to 2692, and any federal regulations
9 promulgated pursuant to such authority. Nothing in sections 701.300 to 701.338
10 shall be applied or interpreted to affect the statutes or regulations of any other
11 state agency or the activities subject to regulation by any other state agency.

701.305. The department of health and senior services shall provide on

2 its Internet website educational information that explains the rights and
3 responsibilities of the property owner and tenants of a dwelling and the lead
4 inspectors, risk assessors, **renovation firms**, and [the lead abatement
5 contractors] **licensed firms**.

701.309. 1. At least [ten] **five business** days prior to the onset of a lead
2 abatement project, the lead abatement contractor conducting such an abatement
3 project shall:

4 (1) Submit to the department a written notification as prescribed by the
5 department; and

6 (2) Pay a notification fee of twenty-five dollars.

7 2. The [lead abatement contractor and any public agency, local community
8 organization, government agency, or quasi- government agency issuing grants or
9 loans for lead abatement projects or interim controls shall inform the owners and
10 tenants of a dwelling that information regarding potential lead hazards can be
11 accessed] **licensed firm conducting a lead abatement project shall**
12 **provide an occupant protection plan to the dwelling occupant, as**
13 **defined by rule, that states that information regarding potential lead**
14 **hazards is available** on the department's Internet website.

15 3. In addition to the specified penalties in section 701.320, failure to
16 notify the department prior to the onset of a lead abatement project shall result
17 in a fine of two hundred fifty dollars imposed against the lead abatement
18 contractor for the first identified offense, five hundred dollars for the second
19 identified offense, and thereafter, fines shall be doubled for each identified
20 offense.

21 4. Written notification as prescribed by the department shall include
22 disclosure of any potential lead hazards to the owners and tenants of a dwelling
23 by the licensed risk assessor who conducted the initial risk assessment.

24 5. If the [lead abatement contractor] **licensed firm** is unable to comply
25 with the requirements of subsection 1 of this section because of an emergency
26 situation as defined by rule, the contractor shall:

27 (1) Notify the department by other means [of] **and have a written**
28 **confirmation of receipt from the department for this** communication
29 within twenty-four hours of the onset of the project; and

30 (2) Submit the written notification and notification fee prescribed in
31 subsection 1 of this section, **and an occupant protection plan** to the
32 department no more than five days after the onset of the project.

33 6. Upon completion of the abatement, the [lead abatement contractor]
34 **licensed firm** shall submit to the department [written notification] **the post**
35 **abatement report** and the final clearance results [report].

701.310. 1. Any abatement of the lead hazard from the dwelling or
2 child-occupied facility shall be performed in a manner so as not to endanger the
3 health of its occupants or persons performing the abatement.

4 2. To the extent permitted by federal regulations, an individual who is an
5 owner, a partner in a partnership owning, or a corporate officer in a corporation
6 owning a dwelling and who is not licensed pursuant to section 701.312 may
7 personally perform lead abatement **or renovation** within a dwelling that he or
8 she owns, unless the residential dwelling is occupied by a person or persons other
9 than the owner, or the owner's immediate family while these activities are being
10 performed, or a child residing in the building has been identified as having an
11 elevated blood lead level. Prior to beginning such abatement, the owner shall
12 consult with the department regarding the most effective method of conducting
13 such lead abatement activities and of the proper procedures in performing those
14 activities.

701.311. 1. Any authorized representative of the department who
2 presents appropriate credentials may, at all reasonable times, enter public or
3 private property to conduct compliance inspections **and training audits** of [lead
4 abatement contractors] **licensed firms, renovation firms, or training**
5 **providers** as may be necessary to implement the provisions of sections 701.300
6 to 701.338 and any rules promulgated pursuant to sections 701.300 to 701.338.

7 2. It is unlawful for any person to refuse entry or access requested for
8 inspecting or determining compliance with sections 701.300 to 701.338. A
9 suitably restricted search warrant, upon a showing of probable cause in writing
10 and upon oath, shall be issued by any circuit or associate circuit judge having
11 jurisdiction for the purpose of enabling such inspections.

12 3. Whenever the [director] **department** determines through a compliance
13 inspection **or audit** that there are reasonable grounds to believe that there has
14 been a violation of any provision of sections 701.300 to 701.338 or the rules
15 promulgated pursuant to sections 701.300 to 701.338, the [director] **department**
16 may give notice of such alleged violation to the owner or person responsible, as
17 provided in this section. The notice shall:

18 (1) Be in writing;

19 (2) Include a statement of the reasons for the issuance of the notice;

20 (3) Allow reasonable time as determined by the [director] **department**
21 for the performance of any act the notice requires;

22 (4) Be served upon the property owner or person responsible as the case
23 may require, provided that such notice shall be deemed to have been properly
24 served upon such person when a copy of such notice has been sent by registered
25 or certified mail to the person's last known address as listed in the local property
26 tax records concerning such property, or when such person has been served with
27 such notice by any other method authorized by law;

28 (5) Contain an outline of corrective action which is required to effect
29 compliance with sections 701.300 to 701.338 and the rules promulgated pursuant
30 to sections 701.300 to 701.338.

31 4. If an owner or person files a written request for a hearing within ten
32 days of the date of receipt of a notice **of disciplinary action, restriction,**
33 **suspension, denial, or revocation**, a hearing shall be held within thirty days
34 from the date of receipt of the notice before the [director or the director's
35 designee] **department** to review the appropriateness of the [corrective]
36 **disciplinary** action. The [director] **department** shall issue a written decision
37 within thirty days of the date of the hearing. Any final decision of the [director]
38 **department** may be appealed to the administrative hearing commission as
39 provided in chapter 621. Any decision of the administrative hearing commission
40 may be appealed as provided in sections 536.100 to 536.140.

41 5. The attorney general or the prosecuting attorney of the county in which
42 any violation of sections 701.300 to 701.338 or the rules promulgated pursuant
43 to sections 701.300 to 701.338 occurred shall, at the request of the city, county or
44 department, institute appropriate proceedings for correction.

45 6. When the department determines that an emergency exists which
46 requires immediate action to protect the health and welfare of the public, the
47 department is authorized to seek a temporary restraining order and
48 injunction. Such action shall be brought at the request of the [director]
49 **department** by the local prosecuting attorney or the attorney general. For the
50 purposes of this subsection, an "emergency" means any set of circumstances that
51 constitutes an imminent health hazard or the threat of an imminent health
52 hazard.

53 7. Nothing in sections 701.300 to 701.338 or rules promulgated pursuant
54 to sections 701.300 to 701.338 shall be construed as requiring the department of
55 health and senior services to issue a notice of violation pursuant to subsection 3

56 of this section whenever the department of health and senior services believes
57 that the public interest will be adequately served in the circumstances by a
58 suitable written notice or warning.

59 8. The department shall develop, publish, and post on its website an
60 enforcement manual that:

61 (1) Delineates the categories of violations for which the department shall
62 issue a notice of violation under subsection 3 of this section; and

63 (2) Delineates the categories of violations for which the department may
64 either issue a notice of violation under subsection 3 of this section or issue a
65 suitable written notice or warning.

701.312. 1. The [director of the] department [of health and senior
2 services] shall develop a program to **train and** license lead inspectors, risk
3 assessors, lead abatement supervisors, lead abatement workers, project designers
4 [and lead abatement contractors] **dust sampling technicians, and licensed**
5 **firms and issue licenses to renovators and renovation firms.** The
6 [director] **department** shall promulgate rules and regulations including, but not
7 limited to:

8 (1) The power to issue, restrict, suspend, revoke, deny and reissue
9 licenses;

10 (2) The power to issue notices of violation, written notices and letters of
11 warning;

12 (3) The ability to enter into reciprocity agreements with other states that
13 have similar licensing provisions;

14 (4) Fees for any such licenses **and trainings**;

15 (5) Training, education and experience requirements; and

16 (6) The implementation of work practice standards, reporting
17 requirements [and], licensing standards, **and record keeping.**

18 2. The [director] **department** shall require, as a condition of licensure,
19 [lead abatement contractors] **licensed firms conducting lead-bearing**
20 **substance activities** to purchase and maintain **general** liability [and errors
21 and omissions] insurance.

22 3. The [director] **department** shall require a [licensee or an applicant
23 for licensure] **licensed firm** to provide evidence of [their ability to indemnify
24 any person that may suffer damage from lead-based paint activities of which the
25 licensee or applicant may be liable] **current insurance coverage submitted**
26 **to the department prior to conducting lead-bearing substance**

27 activities.

28 4. Any individual or renovation firm certified and in good
29 standing with the United States Environmental Protection Agency shall
30 be recognized by the department as a certified renovation firm or
31 renovator and shall be required to attend an accredited renovator
32 refresher course as the department shall require by rule.

701.313. 1. Any local community organization, government agency, or
2 quasi-government agency issuing grants or loans for lead abatement projects
3 must provide written notification to the department no later than ten days prior
4 to the onset of a lead abatement project. The written notification shall include,
5 but not be limited to, the name of the [lead abatement contractor] **licensed firm**,
6 the address of the property on which the lead abatement project shall be
7 conducted, and the date on which the lead abatement project shall be conducted.

8 2. If the local community organization, government agency, or
9 quasi-government agency fails to provide written notification for each property
10 pursuant to subsection 1 of this section, a fine of two hundred fifty dollars shall
11 be levied by the department.

12 3. If the local community organization, the government agency, or
13 quasi-government agency is unable to comply with the requirements in subsection
14 1 of this section due to an emergency situation, as defined by the department, the
15 local community organization, government agency, or quasi-government agency
16 shall:

17 (1) Notify the department by other means [of] **and have written**
18 **confirmation of receipt from the department for this** communication
19 within twenty-four hours of the onset of the lead abatement project; and

20 (2) Provide written notification to the department no later than five days
21 after the onset of the lead abatement project **and receive written**
22 **confirmation of receipt from the department.**

701.316. 1. Except as otherwise authorized by subsection 2 of section
2 701.310, no person shall engage in or conduct lead-bearing substance activities
3 without having successfully completed a department or United States
4 Environmental Protection Agency accredited training program and without
5 having been licensed by the department. **No person shall engage in or**
6 **conduct renovation activities in target housing or child occupied**
7 **facilities without having a licensed renovator on each renovation site.**

8 2. The department shall develop and periodically update lists of all

9 licensed **lead** inspectors, [contractors, supervisors, workers, and other persons
10 who perform lead hazard inspection and abatement] **risk assessors, licensed**
11 **firms, lead abatement supervisors, lead abatement workers, renovation**
12 **firms, renovators, and dust sampling technicians** and shall make such lists
13 available free of charge to interested parties and the public.

14 3. The department may restrict, revoke, suspend or deny any license at
15 any time if it believes that the terms or conditions of such license are being
16 violated or that the holder of, or applicant for, the license has violated any
17 regulation of the department or any other state law or regulation, or any federal
18 law or regulation, or the laws or regulations of other states. The restriction,
19 revocation, suspension or denial shall be effective immediately. Any person
20 aggrieved by a determination by the department to restrict, deny, revoke or
21 suspend any license may request a hearing before the administrative hearing
22 commission within thirty days of receipt of the notice of license restriction,
23 revocation, suspension or denial. The licensure shall remain restricted, revoked,
24 suspended or denied while the hearing is pending.

25 4. The [director] **department** may issue an immediate cease-work order
26 to any person who violates the terms or conditions of any license or
27 **accreditation** issued pursuant to any provision of sections 701.300 to 701.338
28 or any regulation promulgated pursuant to sections 701.300 to 701.338 if, in the
29 best judgment of the [director] **department**, such violation presents a health
30 risk to any person.

701.320. 1. Except as otherwise provided, violation of the provisions of
2 sections 701.308, 701.309, 701.310, 701.311 and 701.316 is a class A
3 misdemeanor.

4 2. Any lead inspector, risk assessor, lead abatement supervisor, lead
5 abatement worker, project designer, or [lead abatement contractor] **licensed**
6 **firm** who engages in a lead abatement project while such person's license, issued
7 under section 701.312, is under suspension or revocation is guilty of a class D
8 felony. **Any renovation firm, renovator, or dust sampling technician who**
9 **engages in renovation activity as defined in section 701.300 while such**
10 **person's license, issued under section 701.312, is under suspension or**
11 **revocation is guilty of a class D felony.**

701.334. The department shall promote and encourage minorities and
2 females and minority- and female-owned entities to apply for licensure pursuant
3 to section 701.312 as licensed lead inspectors, risk assessors, project designers,

4 [and lead abatement contractors, supervisors and] **licensed firms, lead**
5 **abatement supervisors, renovators, renovation firms, and lead**
6 **abatement** workers.

[701.314. The director of the department of health and
2 senior services shall develop a program to accredit training
3 providers to train lead inspectors, risk assessors, lead abatement
4 supervisors, lead abatement workers and project designers. The
5 director shall promulgate rules and regulations including, but not
6 limited to:

7 (1) The power to grant, restrict, suspend, revoke, deny or
8 renew accreditation;

9 (2) The power to issue notices of violation, written notices
10 and letters of warning;

11 (3) The ability to enter into reciprocity agreements with
12 other states that have similar accreditation provisions;

13 (4) Fees for any such accreditation;

14 (5) The curriculum for training;

15 (6) The development of standards for accreditation; and

16 (7) Procedures for monitoring, training, record keeping and
17 reporting requirements for training providers.]

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