

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 1142

By: Quinn of the Senate

and

Mulready of the House

6  
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8  
9 COMMITTEE SUBSTITUTE

10 An Act relating to service warranties; amending  
11 Section 2, Chapter 150, O.S.L. 2012, as last amended  
12 by Section 1, Chapter 10, O.S.L. 2017, Section 7,  
13 Chapter 150, O.S.L. 2012, as amended by Section 4,  
14 Chapter 10, O.S.L. 2017, Section 9, Chapter 150,  
15 O.S.L. 2012, Section 11, Chapter 150, O.S.L. 2012,  
16 Section 14, Chapter 150, O.S.L. 2012, as amended by  
17 Section 6, Chapter 10, O.S.L. 2017 and Section 15,  
18 Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2017,  
19 Sections 141.2, 141.7, 141.9, 141.11, 141.14 and  
20 141.15), which relate to the Service Warranty Act;  
21 modifying definitions; requiring certain financial  
22 statements be audited or verified under oath under  
23 certain circumstances; specifying certain insolvent  
24 or impaired associations may have license revoked,  
suspended or not renewed; specifying financial  
statements shall be filed by certain associations;  
modifying form and principles to be used for filing  
certain financial statements; modifying statutory  
reference; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY Section 2, Chapter 150, O.S.L.  
2 2012, as last amended by Section 1, Chapter 10, O.S.L. 2017 (15 O.S.  
3 Supp. 2017, Section 141.2), is amended to read as follows:

4 Section 141.2 As used in the Service Warranty Act:

- 5 1. "Commissioner" means the Insurance Commissioner;
- 6 2. "Consumer product" means tangible personal property  
7 primarily used for personal, family, or household purposes;
- 8 3. "Department" means the Insurance Department;
- 9 4. "Gross income" means the total amount of revenue received in  
10 connection with business-related activity;
- 11 5. "Gross written provider fee" means the total amount of  
12 consideration, inclusive of commissions, paid by a consumer for a  
13 service warranty issued in this state;
- 14 6. "Impaired" means having liabilities in excess of assets;
- 15 7. "Indemnify" means to undertake repair or replacement of a  
16 consumer product or a newly-constructed residential structure,  
17 including any appliances, electrical, plumbing, heating, cooling or  
18 air conditioning systems, in return for the payment of a segregated  
19 provider fee, when the consumer product or residential structure  
20 becomes defective or suffers operational failure;
- 21 8. "Insolvent" means any actual or threatened delinquency  
22 including, but not limited to, any one or more of the following  
23 circumstances:

24

1 a. (1) for an association's relying on subsection A of  
2 Section 141.6 of this title, if the association's  
3 total liabilities exceed the association's total  
4 assets as calculated in accordance with statutory  
5 accounting principles, or excluding goodwill,  
6 franchises, customer lists, patents or  
7 trademarks, and receivables from or advances to  
8 officers, directors, employees, salesmen, and  
9 affiliated companies. In order to include  
10 receivables from affiliated companies as assets  
11 as defined pursuant to this subparagraph and  
12 paragraph 12 of this section, the service  
13 warranty association shall provide a written  
14 guarantee to assure repayment of all receivables,  
15 loans, and advances from affiliated companies.  
16 The written guarantee must be made by a  
17 guaranteeing organization which:  
18 (1) has been in continuous operation for ten (10)  
19 years or more and has net assets in excess of  
20 Five Hundred Million Dollars (\$500,000,000.00),  
21 (2) submits a guarantee on a form acceptable to the  
22 Insurance Commissioner that contains a provision  
23 which requires that the guarantee be irrevocable,  
24 unless the guaranteeing organization can

1 ~~demonstrate to the Commissioner's satisfaction~~  
2 ~~that the cancellation of the guarantee will not~~  
3 ~~result in the net assets of the service warranty~~  
4 ~~association falling below its minimum net asset~~  
5 ~~requirement and the Commissioner approves~~  
6 ~~cancellation of the guarantee,~~

7 ~~(3) initially submits a statement from a certified~~  
8 ~~public accountant of the guaranteeing~~  
9 ~~organization attesting that the net assets of the~~  
10 ~~guaranteeing organization meet or exceed the net~~  
11 ~~assets requirement as provided in division (1) of~~  
12 ~~this subparagraph and that the net assets of the~~  
13 ~~guaranteeing organization exceed the amount of~~  
14 ~~the receivable of the service warranty~~  
15 ~~association that is being guaranteed by the~~  
16 ~~guaranteeing organization,~~

17 ~~(4) submits annually to the Commissioner, within~~  
18 ~~three (3) months after the end of its fiscal~~  
19 ~~year, with the annual statement required by~~  
20 ~~Section 141.14 of this title, a statement from an~~  
21 ~~independent certified public accountant attesting~~  
22 ~~that the net assets of the guaranteeing~~  
23 ~~organization meet or exceed the net assets~~  
24 ~~requirement as provided in division (1) of this~~

1                   ~~subparagraph and that the net assets of the~~  
2                   ~~guaranteeing organization exceed the amount of~~  
3                   ~~the receivable of the service warranty~~  
4                   ~~association that is being guaranteed by the~~  
5                   ~~guaranteeing organization, and~~

6                   ~~(5) the receivables are maintained as cash or as~~  
7                   ~~marketable securities,~~

8                   (2) for an association relying on subsection B of  
9                   Section 141.6 of this title, if the association's  
10                   total liabilities exceed the association's total  
11                   assets as calculated in accordance with generally  
12                   accepted accounting principles,

13                   b. the business of any such association is being  
14                   conducted fraudulently, or

15                   c. the association has knowingly overvalued its assets;

16                   9. "Insurer" means any property or casualty insurer duly  
17 authorized to transact such business in this state;

18                   10. "Motor vehicle ancillary service" includes any one or more  
19 of the following services:

20                   a. repair or replacement of tires and/or wheels on a  
21                   motor vehicle damaged as a result of coming into  
22                   contact with road hazards,

23                   b. the removal of dents, dings or creases on a motor  
24                   vehicle that can be repaired using the process of

1           paintless dent removal without affecting the existing  
2           paint finish and without replacement vehicle body  
3           panels, sanding, bonding or painting,

4           c.    the repair of chips or cracks in or the replacement of  
5           motor vehicle windshields as a result of damage caused  
6           by road hazards,

7           d.    the replacement of a motor vehicle key or ~~key-fob~~ key  
8           fob in the event that the key or ~~key-fob~~ key fob  
9           becomes inoperable or is lost or stolen,

10          e.    payment to or services provided under the terms of an  
11          ancillary protection product, or

12          f.    other services which may be approved by the  
13          Commissioner, if not inconsistent with other  
14          provisions of this act.

15          A motor vehicle ancillary service does not include repair and/or  
16          replacement of damage to the interior surfaces of a vehicle, or for  
17          repair and/or replacement of damage to the exterior paint or finish  
18          of a vehicle; however, such coverage may be offered in connection  
19          with the sale of a motor vehicle ancillary protection product as  
20          defined in this section;

21          11.   "Motor vehicle ancillary protection product" or "ancillary  
22          protection product" means a protective chemical substance, device or  
23          system that:

24          a.    is installed on or applied to a motor vehicle,

- 1           b.    is designed to prevent loss or damage to a motor  
2                vehicle from a specific cause, and
- 3           c.    includes, within or as an accompaniment to a service  
4                warranty, a written agreement that provides that, if  
5                the ancillary protection product fails to prevent loss  
6                or damage to a motor vehicle from a specific cause,  
7                the provider will pay to or on behalf of the service  
8                warranty holder specified incidental costs as a result  
9                of the failure of the ancillary protection product to  
10              perform pursuant to the terms of the ancillary  
11              protection product warranty. The reimbursement of  
12              incidental cost(s) promised under an ancillary  
13              protection product warranty must be tied to the  
14              purchase of a physical product that is formulated or  
15              designed to make the specified loss or damage from a  
16              specific cause less likely to occur.

17           For purposes of this section, the term ancillary protection  
18           product shall include, but not be limited to, protective chemicals,  
19           alarm systems, body-part-marking products, steering locks, window-  
20           etch products, pedal and ignition locks, fuel and ignition kill  
21           switches and electronic, radio or satellite tracking devices.

22           Ancillary protection product does not include fuel additives, oil  
23           additives or other chemical products applied to the engine,  
24           transmission, or fuel system of a motor vehicle;

1       12. "Net assets" means the amount by which the total assets of  
2 an association, ~~excluding goodwill, franchises, customer lists,~~  
3 ~~patents or trademarks, and receivables from or advances to officers,~~  
4 ~~directors, employees, salesmen and affiliated companies,~~ exceed the  
5 total liabilities of the association. ~~For purposes of the Service~~  
6 ~~Warranty Act, the term "total liabilities" does not include the~~  
7 ~~capital stock, paid in capital or retained earning of an association~~  
8 ~~unless a written guaranty assures repayment and meets the conditions~~  
9 ~~specified in subparagraph a of paragraph 8 of this section;~~

10       13. "Person" includes an individual, company, corporation,  
11 association, insurer, agent and any other legal entity;

12       14. "Provider fee" means the total consideration received or to  
13 be received, including sales commissions, by whatever name called,  
14 by a service warranty association for, or related to, the issuance  
15 and delivery of a service warranty, including any charges designated  
16 as assessments or fees for membership, policy, survey, inspection,  
17 or service or other charges. However, a repair charge is not a  
18 provider fee unless it exceeds the usual and customary repair fee  
19 charged by the association, provided the repair is made before the  
20 issuance and delivery of the warranty;

21       15. "Road hazard" means a hazard that is encountered while  
22 driving a motor vehicle and which may include, but not be limited  
23 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs  
24 or composite scraps;



1       16. "Sales representative" means any person utilized by an  
2 insurer or service warranty association for the purpose of selling  
3 or issuing service warranties;

4       17. "Service warranty" means a contract or agreement for a  
5 separately stated consideration for a specific duration to perform  
6 the repair or replacement of property or indemnification for repair  
7 or replacement for the operational or structural failure due to a  
8 defect or failure in materials or workmanship, with or without  
9 additional provision for incidental payment of indemnity under  
10 limited circumstances, including, but not limited to, failure due to  
11 normal wear and tear, towing, rental and emergency road service,  
12 road hazard, power surge, and accidental damage from handling or as  
13 otherwise provided for in the contract or agreement. The term  
14 "service warranty" includes a contract or agreement to provide one  
15 or more motor vehicle ancillary service(s) as defined by this  
16 section. However:

- 17           a. maintenance service contracts under the terms of which  
18               there are no provisions for such indemnification are  
19               expressly excluded from this definition,
- 20           b. those contracts issued solely by the manufacturer,  
21               distributor, importer or seller of the product, or any  
22               affiliate or subsidiary of the foregoing entities,  
23               whereby such entity has contractual liability  
24               insurance in place, from an insurer licensed in the

1 state, which covers one hundred percent (100%) of the  
2 claims exposure on all contracts written without being  
3 predicated on the failure to perform under such  
4 contracts, are expressly excluded from this  
5 definition,

6 c. the term "service warranty" does not include service  
7 contracts entered into between consumers and nonprofit  
8 organizations or cooperatives the members of which  
9 consist of condominium associations and condominium  
10 owners, which contracts require the performance of  
11 repairs and maintenance of appliances or maintenance  
12 of the residential property,

13 d. the term "service warranty" does not include  
14 warranties, guarantees, extended warranties, extended  
15 guarantees, contract agreements or any other service  
16 contracts issued by a company which performs at least  
17 seventy percent (70%) of the service work itself and  
18 not through subcontractors, and which has been selling  
19 and honoring such contracts in ~~Oklahoma~~ this state for  
20 at least twenty (20) years,

21 e. the term "service warranty" does not include  
22 warranties, guarantees, extended warranties, extended  
23 guarantees, contract agreements or any other service  
24 contracts, whether or not such service contracts

1 otherwise meet the definition of service warranty,  
2 issued by a company which has net assets in excess of  
3 One Hundred Million Dollars (\$100,000,000.00). A  
4 service warranty association may use the net assets of  
5 a parent company to qualify under this section if the  
6 net assets of the company issuing the policy total at  
7 least Twenty-five Million Dollars (\$25,000,000.00) and  
8 the parent company maintains net assets of at least  
9 Seventy-five Million Dollars (\$75,000,000.00) not  
10 including the net assets held by the service warranty  
11 associations,

12 f. service warranties are not insurance in this state or  
13 otherwise regulated under the Insurance Code, and

14 g. motor service club contracts governed under Article 31  
15 of Title 36 of the Oklahoma Statutes are expressly  
16 excluded from this definition;

17 18. "Service warranty association" or "association" means any  
18 person, other than an authorized insurer, contractually obligated to  
19 a service warranty holder under the terms of a service warranty;  
20 provided, this term shall not mean any person engaged in the  
21 business of erecting or otherwise constructing a new home;

22 19. "Warrantor" means any service warranty association engaged  
23 in the sale of service warranties and deriving not more than fifty  
24

1 percent (50%) of its gross income from the sale of service  
2 warranties; and

3 20. "Warranty seller" means any service warranty association  
4 engaged in the sale of service warranties and deriving more than  
5 fifty percent (50%) of its gross income from the sale of service  
6 warranties.

7 SECTION 2. AMENDATORY Section 7, Chapter 150, O.S.L.  
8 2012, as amended by Section 4, Chapter 10, O.S.L. 2017 (15 O.S.  
9 Supp. 2017, Section 141.7), is amended to read as follows:

10 Section 141.7 A. An application for license as a service  
11 warranty association shall be made to, and filed with, the Insurance  
12 Commissioner on printed forms as prescribed and furnished by the  
13 Insurance Commissioner.

14 B. In addition to information relative to its qualifications as  
15 required under Section 141.5 of this title, the Commissioner may  
16 require that the application show:

17 1. The location of the home office of the applicant;  
18 2. The name and residence address of each director or officer  
19 of the applicant; and

20 3. Other pertinent information as may be required by the  
21 Commissioner.

22 C. The Commissioner may require that the application, when  
23 filed, be accompanied by:

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1 1. A copy of the articles of incorporation of the applicant,  
2 certified by the public official having custody of the original, and  
3 a copy of the bylaws of the applicant, certified by the chief  
4 executive officer of the applicant;

5 2. A copy of the most recent financial statement of the  
6 applicant, which must be:

7 a. audited if the applicant complies with the  
8 requirements of subsection A of Section 141.6 of this  
9 title, or

10 b. verified under oath of at least two of its principal  
11 officers if the applicant utilizes an insurance policy  
12 which satisfies the requirements of subsection B of  
13 Section 141.6 of this title; and

14 3. A license fee as required pursuant to Section 141.4 of this  
15 title.

16 D. Upon completion of the application for license, the  
17 Commissioner shall examine the application and make such further  
18 investigation of the applicant as the Commissioner deems advisable.  
19 If the Commissioner finds that the applicant is qualified, the  
20 Commissioner shall issue to the applicant a license as a service  
21 warranty association. If the Commissioner does not find the  
22 applicant to be qualified the Commissioner shall refuse to issue the  
23 license and shall give the applicant written notice of the refusal,  
24 setting forth the grounds of the refusal.

1 E. 1. Any entity that claims one or more of the exclusions  
2 from the definition of service warranty provided in paragraph 17 of  
3 Section 141.2 of this title shall file audited financial statements  
4 and other information as requested by the Commissioner to document  
5 and verify that the contracts of the entity are not included within  
6 the definition of service warranty. Financial statements are not  
7 required to be filed by an entity claiming one of the exclusions set  
8 forth in subparagraphs (a) and (b) of paragraph 17 of Section 141.2  
9 of this title.

10 2. Any entity that begins claiming an exclusion exemption as  
11 provided by paragraph 17 of Section 141.2 of this title shall make  
12 the filing required by subsection E of this section prior to  
13 conducting or continuing business in this state.

14 3. Any entity approved for an exclusion exemption as provided  
15 by paragraph 17 of Section 141.2 of this title may be required by  
16 the Commissioner to provide subsequent information ascertained by  
17 the Commissioner to be necessary to determine continued  
18 qualification for an exclusion exemption as provided by paragraph 17  
19 of Section 141.2 of this title. Financial statements shall not be  
20 required to be filed by an entity claiming one of the exclusions set  
21 forth in subparagraphs (a) and (b) of paragraph 17 of Section 141.2  
22 of this title.

23 4. Other information requested by the Commissioner may include,  
24 but is not limited to, SEC filings, audited financial statements of

1 affiliates, and organizational data and organizational charts.  
2 Financial statements shall not be required to be filed by an entity  
3 claiming one of the exclusions set forth in subparagraphs (a) and  
4 (b) of paragraph 17 of Section 141.2 of this title.

5 SECTION 3. AMENDATORY Section 9, Chapter 150, O.S.L.  
6 2012 (15 O.S. Supp. 2017, Section 141.9), is amended to read as  
7 follows:

8 Section 141.9 A. The license of any service warranty  
9 association may be revoked or suspended, or the Insurance  
10 Commissioner may refuse to renew any such license, if it is  
11 determined that the association has violated any lawful rule or  
12 order of the Commissioner or any provision of the Service Warranty  
13 Act, or if the association is determined to be insolvent or  
14 impaired.

15 B. The license of any service warranty association shall be  
16 suspended or revoked if it is determined that such association:

17 1. ~~Is insolvent or impaired, or is~~ in any condition as would  
18 render its further transaction of service warranties in this state  
19 hazardous or injurious to its warranty holders or to the public;

20 2. Has refused to be examined or to produce its accounts,  
21 records, and files for examination, or if any of its officers have  
22 refused to give information with respect to its affairs or have  
23 refused to perform any other legal obligation as to such  
24 examination, when required by the Commissioner;

1           3. Has failed to pay any final judgment rendered against it in  
2 this state within sixty (60) days after the judgment became final;

3           4. Has, without just cause, refused to pay proper claims  
4 arising under its service warranties or, without just cause, has  
5 compelled warranty holders to accept less than the amount due them,  
6 or to employ attorneys, or to bring suit against the association to  
7 secure full payment or settlement of such claims;

8           5. Is affiliated with and under the same general management or  
9 interlocking directorate or ownership as another service warranty  
10 association which transacts direct warranties in this state without  
11 having a license; or

12           6. Is using such methods or practices in the conduct of its  
13 business as would render its further transaction of service  
14 warranties in this state hazardous or injurious to its warranty  
15 holders or to the public.

16           C. The Commissioner may at his or her discretion and without  
17 advance notice or hearing immediately suspend the license of any  
18 service warranty association if the Commissioner finds that one or  
19 more of the following circumstances exist:

20           1. The association is insolvent or impaired;

21           2. The reserve account required by the Service Warranty Act is  
22 not being maintained;

23

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1 3. A proceeding for receivership, conservatorship  
2 rehabilitation or any other delinquency proceeding regarding the  
3 association has been commenced in any state; or

4 4. The financial condition or business practices of the  
5 association otherwise pose an imminent threat to the public health,  
6 safety, or welfare of the residents of this state.

7 D. A violation of the Service Warranty Act by an insurer is  
8 grounds for suspension or revocation of the insurer's certificate of  
9 authority in this state.

10 SECTION 4. AMENDATORY Section 11, Chapter 150, O.S.L.  
11 2012 (15 O.S. Supp. 2017, Section 141.11), is amended to read as  
12 follows:

13 Section 141.11 A. A suspension of the license of a service  
14 warranty association shall be for such period, not to exceed one (1)  
15 year, as is fixed in the order of suspension, unless such suspension  
16 or the order upon which the suspension is based is modified,  
17 rescinded, or reversed.

18 B. During the period of suspension, the association shall file  
19 ~~its annual statement~~ any financial statements and pay any fees as  
20 required by the Service Warranty Act as if the license had been  
21 continued in full force.

22 C. Upon expiration of the suspension period, if within such  
23 period the license has not otherwise terminated, the license of the  
24 association shall automatically be reinstated, unless the causes of

1 the suspension have not been removed or the association is otherwise  
2 not in compliance with the requirements of the Service Warranty Act.

3 SECTION 5. AMENDATORY Section 14, Chapter 150, O.S.L.  
4 2012, as amended by Section 6, Chapter 10, O.S.L. 2017 (15 O.S.  
5 Supp. 2017, Section 141.14), is amended to read as follows:

6 Section 141.14 A. In addition to the license fees provided in  
7 the Service Warranty Act for service warranty associations each  
8 service warranty association and insurer shall annually, on or  
9 before the first day of May, file with the Insurance Commissioner  
10 its annual financial statement ~~in the form prescribed by the~~  
11 ~~Commissioner~~ showing all gross written provider fees or assessments  
12 received by it in connection with the issuance of service warranties  
13 in this state during the preceding calendar year and other relevant  
14 financial information as deemed necessary by the Commissioner, ~~using~~  
15 ~~accounting principles which will enable the Commissioner to~~  
16 ~~ascertain whether the financial requirements set forth in Section~~  
17 ~~141.7 of this title have been satisfied.~~ The financial statements  
18 required by this subsection must be:

19 1. Audited and prepared in accordance with statutory accounting  
20 principles if the applicant complies with the requirements of  
21 subsection A of Section 141.6 of this title; or

22 2. Verified under oath of at least two of its principal  
23 officers and prepared in accordance with generally accepted  
24 accounting principles if the applicant utilizes an insurance policy

1 which satisfies the requirements of subsection B of Section 141.6 of  
2 this title.

3 B. The Commissioner may levy a fine of up to One Hundred  
4 Dollars (\$100.00) a day for each day an association neglects to file  
5 ~~the annual~~ its financial statement in the form and within the time  
6 provided by the Service Warranty Act.

7 C. In addition to ~~an~~ the annual statement financial statements  
8 required to be filed by subsection A of this section, the  
9 Commissioner may require of licensees, under oath and in the form  
10 prescribed by it, quarterly statements or special reports which the  
11 Commissioner deems necessary for the proper supervision of licensees  
12 under the Service Warranty Act.

13 D. Provider fees and assessments received by associations and  
14 insurers for service warranties shall not be subject to the premium  
15 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,  
16 but shall be subject to an administrative fee of equal to two  
17 percent (2%) of the gross provider fee received on the sale of all  
18 service warranties issued in this state during the preceding  
19 calendar quarter. The fees shall be paid quarterly to the Insurance  
20 Commissioner. However, licensed associations, licensed insurers and  
21 entities with applications for licensure as a service warranty  
22 association pending with the Department that have contractual  
23 liability insurance in place as of March 31, 2009, from an insurer  
24 which satisfies the requirements of subsections B and C of Section

1 ~~141.7~~ 141.6 of this title and which covers one hundred percent  
2 (100%) of the claims exposure of the association or insurer on all  
3 contracts written may elect to pay an annual administrative fee of  
4 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent  
5 administrative fee.

6 SECTION 6. AMENDATORY Section 15, Chapter 150, O.S.L.  
7 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as  
8 follows:

9 Section 141.15 A. Service warranty associations licensed  
10 pursuant to the Service Warranty Act are subject to periodic  
11 examination by the Insurance Commissioner, in the same manner and  
12 subject to the same terms and conditions that apply to insurers.

13 B. The Commissioner is not required to examine an association  
14 that has less than Twenty Thousand Dollars (\$20,000.00) in gross  
15 written provider fees as reflected in its most recent annual  
16 financial statement. The Commissioner may examine such an  
17 association if the Commissioner has reason to believe that the  
18 association may be in violation of the Service Warranty Act or is  
19 otherwise in an unsound financial condition. If the Commissioner  
20 examines such an association, the examination fee shall not exceed  
21 five percent (5%) of the gross written provider fees of the  
22 association.

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1 SECTION 7. This act shall become effective November 1, 2018.

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3 56-2-10309 AMM 04/04/18  
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