

CHAPTER 51

DOMESTIC MUTUAL ASSESSMENT INSURERS

§3601. Scope of chapter

1. This chapter applies only as to domestic mutual insurers heretofore or hereafter authorized to transact and transacting property insurances in this State on the assessment plan, as defined in section 3603, and to the assessment department of insurers also transacting insurance on the cash premium plan.

[PL 1969, c. 177, §60 (AMD).]

2. Insurers to the extent to which subject to this chapter may in this chapter be referred to as "mutual assessment insurers."

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §60 (AMD).

§3602. Chapter exclusive

Nothing in this Title shall either directly or indirectly apply to such mutual assessment insurers except as contained or referred to in this chapter. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3603. Mutual assessment plans; definitions

1. For the purposes of this Title a mutual assessment insurer is a mutual insurer which is doing business on:

A. A post-loss assessment plan; or [PL 1969, c. 132, §1 (NEW).]

B. On an advance assessment or contingent liability plan. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

2. A post-loss assessment plan insurer is one which depends in whole or substantial part on regular or special assessments levied upon its members after a loss or series of losses for payment of losses and expenses. A post-loss assessment plan insurer may collect from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance. Future regular or special assessments may be secured by use of a premium note signed by the policyholder.

[PL 1969, c. 132, §1 (NEW).]

3. An advance assessment plan insurer shall by its bylaws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than one or more than 6 times the advance assessment for the member's policy at the annual advance assessment rate for a term of one year. Such an advance assessment plan insurer may issue both assessable and nonassessable advance cash premium policies. Any assessment, special or regular, levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of the holders of policies subject to assessment, and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency.

[PL 1969, c. 132, §1 (NEW).]

4. Nothing in this chapter shall be deemed to prohibit the acquisition, accumulation and maintenance of surplus and unallocated funds.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3604. Insuring powers; reinsurance

1. An assessment plan insurer shall have authority to transact, and shall transact only such insurance as is permitted by its charter and by its certificate of authority.

[PL 1969, c. 132, §1 (NEW).]

2. Any such insurer shall have power to cede reinsurance of any risk or part thereof which it is authorized to insure direct; and shall have power to accept reinsurance from other domestic assessment plan insurers of any risk which it has authority to insure direct.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3605. Formation of new assessment plan insurers

Assessment plan insurers must be formed under the applicable provisions of sections 3306 (incorporation of domestic stock, mutual insurers) to 3309 (completion of incorporation; general powers, duties), except that the articles of incorporation of the corporation must stipulate that the corporation is formed to transact insurance on the assessment plan and other provisions contained in the certificate must be consistent with the applicable provisions of this chapter. [PL 2013, c. 299, §20 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 2013, c. 299, §20 (AMD).

§3606. Certificate of authority required

No such insurer shall transact insurance in this State except as authorized by a subsisting certificate of authority issued to the insurer by the superintendent. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3607. Capital funds required; existing insurers

1. A mutual assessment insurer heretofore organized to transact and transacting only fire, marine and glass insurance shall not have a net retention of liability on any one risk in excess of \$200 until its gross assets exceed \$2,000, after which its net retention of liability shall be as provided in section 3623.

[PL 1969, c. 132, §1 (NEW).]

2. Mutual insurers organized prior to January 1968 to transact and transacting kinds of insurance other than fire, marine and glass shall have a guaranty capital fund in amount not less than as required under laws in force immediately prior to January 1, 1970, and if organized on or after January 1, 1968, shall have guaranty capital funds of not less than \$500,000. Such an insurer shall not be authorized to transact insurance until at least 1/4 of its guaranty capital funds have been paid in, in cash, and invested in such manner as is provided in chapter 13.

[PL 1973, c. 625, §150 (AMD).]

3. If an insurer operating under this section fails to comply with the superintendent's request to increase its paid-in guaranty capital funds within the amount otherwise required by law, it shall cease to write any class or kind of insurance other than fire, marine or glass until such time as the superintendent's request has been complied with.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

4. Except as hereinabove provided, all such insurers holding subsisting certificates of authority immediately prior to January 1, 1970 may continue to be so authorized as long as qualified for such authority as under laws in force immediately prior to such effective date.

[PL 1973, c. 625, §150 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1973, c. 625, §150 (AMD).

§3608. Capital funds required; new mutual assessment insurers

A mutual insurer hereafter organized to transact property insurance on the assessment plan shall not be authorized to transact insurance unless it: [PL 1969, c. 132, §1 (NEW).]

1. Establishes and maintains guaranty capital funds of at least \$50,000, all of which shall have been paid in, in cash, and

[PL 1969, c. 132, §1 (NEW).]

2. Receives not less than 25 bona fide written applications from not less than 25 persons for insurance of the kind proposed to be transacted, of not less than \$100,000 in amount at risk as to principal hazards to be insured, and

[PL 1969, c. 132, §1 (NEW).]

3. Receives or collects the initial payment on the premium for the insurance applied for, together with such premium notes as it is contemplated to use in connection with applications for insurance in general, and

[PL 1969, c. 132, §1 (NEW).]

4. Is otherwise qualified for such authority under this chapter.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3609. New assessment plan insurers; conversion

Mutual insurers organized to transact insurance on the assessment plan are not authorized to transact any kind of insurance other than property insurance or to transact insurance of any kind on the cash premium plan, unless the insurer qualifies for such authority in accordance with the requirements of domestic mutual insurers organized under chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), and by appropriate amendment to its articles of incorporation converts to such a legal reserve insurer. [PL 2013, c. 299, §21 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 2013, c. 299, §21 (AMD).

§3610. Guaranty capital shares; dividends, investment, deposit, voting rights

1. Where the insurer is permitted or required to have guaranty capital shares, such capital shall be divided into shares of \$100 each and certificates shall be issued therefor.

[PL 1969, c. 132, §1 (NEW).]

2. The holders of guaranty capital shares may receive dividends not exceeding 7% of the amount received by the insurer for issuance of such shares in any one calendar year from the net earnings of the insurer after providing for all expenses, losses, reserves and liabilities then incurred. [PL 1969, c. 132, §1 (NEW).]

3. Guaranty capital resulting from shares shall be invested in such manner as is provided in chapter 13. [PL 1969, c. 132, §1 (NEW).]

4. Guaranty capital shareholders and members of the insurer shall be subject to the same provisions of law relative to their right to vote as apply respectively to stockholders in stock insurers and policyholders in purely mutual insurers. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3611. Guaranty capital shares; increase of paid-in capital

If an insurer heretofore or hereafter has been authorized to transact insurance upon the basis of guaranty capital shares not 100% paid-in, the unpaid portion of such guaranty or so much thereof as the superintendent deems necessary, shall be paid in at such times as in the opinion of the superintendent is necessary for the adequate protection of the policyholders. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3612. Guaranty capital shares; deficiency and assessment

When the cash and other available assets of an insurer with guaranty capital shares are exhausted, such part of the guaranty capital fund as may be required shall, with the approval of the superintendent, be drawn and used to pay losses then due. When such fund is so drawn upon, the directors of the insurer shall make good the amount so drawn by assessments upon the contingent funds or notes of the insurer or by borrowed funds as provided for under section 3415; and unless such fund is restored within 6 months from the date of withdrawal, the holders of guaranty fund shares shall be assessed in proportion to the amount of such shares owned by them for the purpose of restoring such capital. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3613. Guaranty capital shares; retirement

Guaranty capital shares may be retired by vote of the policyholders of the insurer when the insurer's surplus, over and above all liabilities including guaranty capital, equals or exceeds the amount of the guaranty capital shares. The guaranty capital shares may be retired in part when the insurer's remaining net surplus and guaranty fund will not thereby be reduced below the amount of original guaranty capital. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3614. Notice of contingent liability; reduction

Where contingent liability of policyholders is provided for, notice of the existence of such liability shall be plainly and legibly given in each policy. Whenever any reduction is made in the contingent

liability of members, the reduction shall apply proportionally to all policies in force. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3615. Delivery, acceptance of policy

The delivery of the policy to the insured and payment by the insured of the initial charge shall be deemed an acceptance of the contract. [PL 1969, c. 177, §61 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §61 (AMD).

§3616. Assessment; remedy if not paid

If any lawful assessment is not paid within 30 days after written demand by the insurer or its agent, the directors may declare the policy suspended until the assessment is paid or may at their option sue for and collect the amount due on such assessment. Mailing such demand addressed to the insured at the insured's address last of record with the insurer, or delivering it to the insured in hand by an authorized agent or officer of the insurer, is conclusive proof that demand has been duly made. [RR 2021, c. 1, Pt. B, §309 (COR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 1, Pt. B, §309 (COR).

§3617. Assessment -- court review; adjustment of claims where no assessment made

1. Whenever the directors of a mutual assessment insurer make an assessment or call on its members for money, or by vote determine that there exists a necessity for such assessment or call, they, or any person interested in the insurer as an officer, policyholder or creditor, may file in the Superior Court in any county, a complaint praying the court to examine the assessment or call or to determine the necessity therefor and all matters connected therewith, and to ratify, amend or annul the assessment or call or to order that the same be made as law and justice may require.

[PL 1969, c. 132, §1 (NEW).]

2. The decision on such complaint, when filed by any party except the insurer, or a receiver, or the superintendent, shall rest in the discretion of the court.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

3. Whenever the directors unreasonably neglect to make an assessment or call to satisfy an admitted or ascertained claim upon the insurer, any judgment creditor, or any person holding such admitted or ascertained claim, or the superintendent may make the application. Upon such application, if made by the directors, or upon order of court if made by application of any other party, the directors shall set forth the claims against the insurer, its assets and all other facts and particulars appertaining to the matter.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3618. -- order of notice to parties interested, and proceedings

The court before which the complaint described in section 3617 is filed shall order notice to all parties interested, by publication or otherwise. Upon the return thereof, the court shall proceed to examine the assessment or call, the necessity therefor and all matters connected therewith. Any parties interested may appear and be heard thereon, and all questions that may arise shall be heard and determined as in other civil actions in which equitable relief is sought. The court may refer the

apportionment or calculation to any competent person, and upon the examination may ratify, amend or annul the assessment or call, or order one to be made. In case the assessment or call is altered or amended, or one is ordered, the directors shall forthwith proceed to vote the same in legal form and the record of such vote shall be set forth in a supplemental answer. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3619. Proceedings before master or auditor

Whenever the court appoints a master or auditor to make the apportionment or calculation for an assessment, such master or auditor shall appoint a time and place to hear all parties interested in the assessment or call, and shall give personal notice thereof, in writing, to the superintendent, and through the post office or in such other manner as the court directs, so far as the master or auditor is able, to all persons liable upon the assessment or call. The auditor or master shall hear the parties and make report to the court of all the master's or auditor's doings respecting such assessment or call and all matters connected therewith, and all parties interested in such report or assessment have a right to be heard by the court respecting the same, in the same manner as is provided. [RR 2021, c. 1, Pt. B, §310 (COR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §310 (COR).

§3620. -- when assessment final; costs; control of funds and payment of assessments

1. When an assessment or call has been ratified, ascertained or established as provided for in sections 3617 to 3619, a decree shall be entered which shall be final and conclusive upon the insurer and all parties liable to the assessment or call as to the necessity of the same, the authority of the insurer to make or collect it, the amount thereof and all formalities connected therewith. Where an assessment or call is altered or amended by vote of directors and decree of the court thereon, such amended or altered assessment or call is binding upon all parties who would have been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call. [PL 1969, c. 132, §1 (NEW).]

2. All proceedings shall be at the cost of the insurer, unless the court for cause otherwise orders. [PL 1969, c. 132, §1 (NEW).]

3. In all cases the court may control the disposal of the funds collected under these proceedings, and may issue all necessary processes to enforce the payment of such assessments against all persons liable therefor.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3621. -- assessment not sufficient; collection stayed by court

Whenever it shall appear to the court before which the complaint provided for in section 3617 is pending, that the net proceeds of any assessment or call will not be sufficient to furnish substantial relief to those having claims against the insurer, it may decree that no assessment shall be collected. When, on application of the superintendent or any person interested, the court is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the insurer, it may stay its further collection. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3622. Nonassessable policies; assessable, nonassessable liability

1. A mutual insurer heretofore formed and transacting insurance under this chapter may issue nonassessable advance cash premium policies in this State upon compliance with either of the following requirements:

A. Surplus. The insurer shall have and maintain a surplus to policyholders, as determined by its last annual statement filed with the superintendent, of not less than \$100,000, or [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

B. Surplus and unearned premium reserve. The insurer shall have and maintain a surplus to policyholders, as determined by its latest annual statement filed with the superintendent, of not less than \$75,000, provided its unearned premium reserve is at all times less than its surplus to policyholders. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]
[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

2. If such an insurer, after qualifying to issue a nonassessable cash premium policy, fails to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the requirements for a period of one year.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§3623. Limit of risk

1. Except as provided in section 3607, subsection 1, an insurer shall not retain liability as to any one risk in an amount exceeding 10% of its surplus and in addition 8% of the amount at any time due on its premium notes.

[PL 1975, c. 124 (AMD).]

2. Valid reinsurance ceded by the insurer and then in force shall be deducted from the gross risk assumed in determining net risk retained.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1975, c. 124 (AMD).

§3624. Unearned premium reserve

An insurer which collects a cash premium or advance assessment shall maintain an unearned premium reserve equal to 50% of the cash premium or advance assessment on its policies in force. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3625. Directors' residence, compensation

1. A majority of the board of directors of the insurer shall be residents of, and actually reside in, this State.

[PL 1969, c. 132, §1 (NEW).]

2. The salary or compensation for services of the directors of the insurer shall be fixed by the policyholders at their annual meeting.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3626. Annual statement by directors

The directors of every insurer shall cause a detailed account of its expenses for the year preceding, the amount of property actually insured at that time, the amount due on its premium notes and the amount of all debts due to and from the insurer to be laid before the policyholders at the annual meeting. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3627. Agents; liability

Any person who solicits insurance on behalf of any insurer or transmits for a person other than the person soliciting the insurance an application for, or a policy of, insurance to or from such insurer, or in any manner acts in the negotiation of such insurance, or in the inspection or valuation of the property insured must be deemed the agent of the insurer, and except as otherwise provided, is liable to all the duties, requirements, liabilities and penalties to which an agent of any insurer is subject. [RR 2021, c. 1, Pt. B, §311 (COR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 1, Pt. B, §311 (COR).

§3628. Agents -- licensing

All agents of insurers subject to this chapter are subject to the applicable requirements of chapter 16, except that: [PL 1997, c. 457, §45 (AMD); PL 1997, c. 457, §55 (AFF).]

1. No personal examination shall be required of the applicant and no examination fee shall be charged, as to an applicant for a license as an agent of an insurer writing insurance solely on the assessment plan, if on January 1, 1970 the applicant was also a director or officer of such insurer; [PL 1973, c. 625, §151 (AMD).]

2. No fee shall be required by the superintendent for license as resident agent issued to any individual referred to in subsection 1, as agent of such an insurer. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1973, c. 625, §151 (AMD). PL 1997, c. 457, §45 (AMD). PL 1997, c. 457, §55 (AFF).

§3629. Other provisions applicable

The following chapters and provisions of this Title, where and to the extent not inconsistent with this chapter and the reasonable implications thereof, also apply as to domestic mutual assessment insurers which are subject to this chapter: [PL 1969, c. 132, §1 (NEW).]

1. Chapter 1 (general definitions and provisions). [PL 1969, c. 132, §1 (NEW).]

2. Chapter 3 (the insurance superintendent), except that an insurer transacting insurance only on the assessment plan shall not be subject to section 228 (examination expense), and shall not be required to pay the expense of examination of the insurer. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

3. Chapter 5 (authorization of insurers and general requirements), except that the following sections or provisions shall not apply:

A. Section 410 (capital funds required); [PL 1969, c. 132, §1 (NEW).]

B. Section 411 (insuring combinations without additional capital funds); [PL 1969, c. 132, §1 (NEW).]

C. Section 413 (application for certificate of authority), to the extent that payment is required of a fee for application for or issuance of a certificate of authority of an insurer transacting insurance on the assessment plan only; [PL 1969, c. 132, §1 (NEW).]

D. Section 415 (continuance, expiration, reinstatement of certificate of authority), to the extent that payment of fee for continuance of certificate of authority is required of an insurer transacting insurance on the assessment plan only; and [PL 1969, c. 132, §1 (NEW).]

E. Section 423 (annual statement), to the extent that payment of a fee for filing the annual statement is required of an insurer transacting insurance on the assessment plan only. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

4. Chapter 7 (fees and taxes), except as otherwise expressly provided in this chapter, and that no fee shall be charged for the certificate of authority of an insurer transacting insurance on the assessment plan only.

[PL 1969, c. 132, §1 (NEW).]

5. Chapter 9 (kinds of insurance), except the following sections:

A. Section 702 ("life insurance" defined); [PL 1969, c. 132, §1 (NEW).]

B. Section 709 ("title insurance" defined); and [PL 1969, c. 132, §1 (NEW).]

C. Section 721 (limits of risk). [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

6.

[PL 2001, c. 72, §17 (RP).]

6-A. Section 901-A (statutory accounting principles);

[PL 2001, c. 72, §18 (NEW).]

7. Chapter 13 (investments).

[PL 1969, c. 132, §1 (NEW).]

8. Chapter 15 (administration of deposits).

[PL 1969, c. 132, §1 (NEW).]

9. Chapter 16;

[PL 1997, c. 457, §46 (AMD); PL 1997, c. 457, §55 (AFF).]

10. Chapter 23 (trade practices and frauds).

[PL 1969, c. 132, §1 (NEW).]

11. Chapter 25 (rates and rating organizations), except as provided in such chapter 25.

[PL 1969, c. 132, §1 (NEW).]

12. Chapter 27 (the insurance contract); except that section 2415 (charter, bylaw provisions) shall not apply as to insurance written on the mutual assessment plan.

[PL 1969, c. 132, §1 (NEW).]

13. Chapter 39 (casualty insurance contracts).

[PL 1969, c. 132, §1 (NEW).]

14. Chapter 41 (property insurance contracts).

[PL 1969, c. 132, §1 (NEW).]

15. Chapter 43 (surety insurance contracts).

[PL 1969, c. 132, §1 (NEW).]

16. Chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), except as to the following sections:

A. Sections 3352 to 3358 (initial qualification, qualifying applications for insurance, guaranty capital, and related subjects); and [PL 1969, c. 132, §1 (NEW).]

B. Sections 3364 to 3367 (provisions relative to contingent liability and nonassessable policies). [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

17. Chapter 49 (continuity of management).

[PL 1969, c. 132, §1 (NEW).]

18. Chapter 57 (delinquent insurers; rehabilitation and liquidation).

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1997, c. 457, §46 (AMD). PL 1997, c. 457, §55 (AFF). PL 2001, c. 72, §§17,18 (AMD).

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