

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 500

Introduced by Assembly Member Ammiano

February 20, 2013

An act to amend Sections 11106, 16520, 16540, 16850, 23510, and 28220 of, and to add Sections 17060, 25135, and 28255 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 500, as amended, Ammiano. Firearms.

(1) Existing law requires the Department of Justice, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. Existing law generally requires firearms transactions to be completed through a licensed firearms dealers. If a dealer cannot legally deliver a firearm, existing law requires the dealer to return the firearm to the transferor, seller, or person loaning the firearm.

~~This bill would require the department, if the department has not completed the examination of its records within 2 days prior to the conclusion of the 10-day waiting period described above, to notify the dealer of this fact, and would require the dealer to withhold delivery until 7 days have elapsed after the notification is received by the dealer. The bill would also prohibit a dealer from returning a firearm to the~~

~~person selling, loaning, or transferring the firearm until 7 days have elapsed after the notification is received by the dealer.~~

This bill would require the department immediately notify the dealer to delay the transfer of a firearm to a purchaser if the records of the department, or if specified records available to the department, indicate that the purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation, as specified, or that he or she has been arrested for, or charged with, a crime, as specified, and the department is unable to ascertain whether the purchaser is ineligible to possess, receive, own, or purchase the firearm as a result of the determination of the purchaser's mental health or the final disposition of the arrest or criminal charge prior to the conclusion of the 10-day waiting period. If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, within 30 days of the dealer's submission of purchaser information, the bill would require the department to notify the firearms dealer, and would authorize the dealer to transfer the firearm to the purchaser.

(2) Existing law requires a firearm purchaser to present the dealer with clear evidence of the person's identity and age, and requires the dealer to make a permanent record of the transaction. Existing law requires the dealer to transmit the record of applicant information to the Department of Justice by electronic or telephonic transfer.

Commencing January 1, 2015, this bill would also require a dealer to notify the department that the person in an application to purchase actually took possession of the firearm, as specified.

(3) Under existing law certain persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others.

This bill would prohibit a person who is residing with someone who is prohibited by state or federal law from possessing a firearm from keeping a firearm at that residence unless the firearm is either kept within a locked container, locked gun safe, locked trunk, locked with a locking device, disabled by a firearm safety device, or carried on the person. The bill would make a violation of this provision a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11106 of the Penal Code, as added by
2 Chapter 745 of the Statutes of 2011, is amended to read:

3 11106. (a) In order to assist in the investigation of crime, the
4 prosecution of civil actions by city attorneys pursuant to paragraph
5 (3) of subdivision (c), the arrest and prosecution of criminals, and
6 the recovery of lost, stolen, or found property, the Attorney General
7 shall keep and properly file a complete record of all copies of
8 fingerprints, copies of licenses to carry firearms issued pursuant
9 to Section 26150, 26155, 26170, or 26215, information reported
10 to the Department of Justice pursuant to Section 26225, dealers'
11 records of sales of firearms, reports provided pursuant to Article
12 1 (commencing with Section 27500) of Chapter 4 of Division 6
13 of Title 4 of Part 6, or pursuant to any provision listed in
14 subdivision (a) of Section 16585, forms provided pursuant to
15 Section 12084, as that section read prior to being repealed, reports
16 provided pursuant to Article 1 (commencing with Section 26700)
17 and Article 2 (commencing with Section 26800) of Chapter 2 of
18 Division 6 of Title 4 of Part 6, that are not dealers' records of sales
19 of firearms, information provided pursuant to Section 28255, and
20 reports of stolen, lost, found, pledged, or pawned property in any
21 city or county of this state, and shall, upon proper application
22 therefor, furnish this information to the officers referred to in
23 Section 11105.

24 (b) (1) The Attorney General shall permanently keep and
25 properly file and maintain all information reported to the
26 Department of Justice pursuant to the following provisions as to
27 firearms and maintain a registry thereof:

28 (A) Article 1 (commencing with Section 26700) and Article 2
29 (commencing with Section 26800) of Chapter 2 of Division 6 of
30 Title 4 of Part 6.

1 (B) Article 1 (commencing with Section 27500) of Chapter 4
2 of Division 6 of Title 4 of Part 6.

3 (C) Chapter 5 (commencing with Section 28050) of Division 6
4 of Title 4 of Part 6.

5 (D) Any provision listed in subdivision (a) of Section 16585.

6 (E) Former Section 12084.

7 (F) Section 28255.

8 (G) Any other law.

9 (2) The registry shall consist of all of the following:

10 (A) The name, address, identification of, place of birth (state
11 or country), complete telephone number, occupation, sex,
12 description, and all legal names and aliases ever used by the owner
13 or person being loaned the particular firearm as listed on the
14 information provided to the department on the Dealers' Record of
15 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined
16 in former Section 12084, or reports made to the department
17 pursuant to any provision listed in subdivision (a) of Section 16585,
18 Section ~~28255~~ 28255, or any other law.

19 (B) The name and address of, and other information about, any
20 person (whether a dealer or a private party) from whom the owner
21 acquired or the person being loaned the particular firearm and
22 when the firearm was acquired or loaned as listed on the
23 information provided to the department on the Dealers' Record of
24 Sale, the LEFT, or reports made to the department pursuant to any
25 provision listed in subdivision (a) of Section 16585 or any other
26 law.

27 (C) Any waiting period exemption applicable to the transaction
28 which resulted in the owner of or the person being loaned the
29 particular firearm acquiring or being loaned that firearm.

30 (D) The manufacturer's name if stamped on the firearm, model
31 name or number if stamped on the firearm, and, if applicable, the
32 serial number, other number (if more than one serial number is
33 stamped on the firearm), caliber, type of firearm, if the firearm is
34 new or used, barrel length, and color of the firearm, or, if the
35 firearm is not a handgun and does not have a serial number or any
36 identification number or mark assigned to it, that shall be noted.

37 (3) Information in the registry referred to in this subdivision
38 shall, upon proper application therefor, be furnished to the officers
39 referred to in Section 11105, to a city attorney prosecuting a civil
40 action, solely for use in prosecuting that civil action and not for

1 any other purpose, or to the person listed in the registry as the
2 owner or person who is listed as being loaned the particular firearm.

3 (4) If any person is listed in the registry as the owner of a firearm
4 through a Dealers' Record of Sale prior to 1979, and the person
5 listed in the registry requests by letter that the Attorney General
6 store and keep the record electronically, as well as in the record's
7 existing photographic, photostatic, or nonerasable optically stored
8 form, the Attorney General shall do so within three working days
9 of receipt of the request. The Attorney General shall, in writing,
10 and as soon as practicable, notify the person requesting electronic
11 storage of the record that the request has been honored as required
12 by this paragraph.

13 (c) (1) Any officer referred to in paragraphs (1) to (6), inclusive,
14 of subdivision (b) of Section 11105 may disseminate the name of
15 the subject of the record, the number of the firearms listed in the
16 record, and the description of any firearm, including the make,
17 model, and caliber, from the record relating to any firearm's sale,
18 transfer, registration, or license record, or any information reported
19 to the Department of Justice pursuant to Section 26225, Article 1
20 (commencing with Section 26700) and Article 2 (commencing
21 with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part
22 6, Article 1 (commencing with Section 27500) of Chapter 4 of
23 Division 6 of Title 4 of Part 6, Chapter 5 (commencing with
24 Section 28050) of Division 6 of Title 4 of Part 6, Article 2
25 (commencing with Section 28150) of Chapter 6 of Division 6 of
26 Title 4 of Part 6, Article 5 (commencing with Section 30900) of
27 Chapter 2 of Division 10 of Title 4 of Part 6, Chapter 2
28 (commencing with Section 33850) of Division 11 of Title 4 of Part
29 6, or any provision listed in subdivision (a) of Section 16585, if
30 the following conditions are met:

31 (A) The subject of the record has been arraigned for a crime in
32 which the victim is a person described in subdivisions (a) to (f),
33 inclusive, of Section 6211 of the Family Code and is being
34 prosecuted or is serving a sentence for the crime, or the subject of
35 the record is the subject of an emergency protective order, a
36 temporary restraining order, or an order after hearing, which is in
37 effect and has been issued by a family court under the Domestic
38 Violence Protection Act set forth in Division 10 (commencing
39 with Section 6200) of the Family Code.

1 (B) The information is disseminated only to the victim of the
2 crime or to the person who has obtained the emergency protective
3 order, the temporary restraining order, or the order after hearing
4 issued by the family court.

5 (C) Whenever a law enforcement officer disseminates the
6 information authorized by this subdivision, that officer or another
7 officer assigned to the case shall immediately provide the victim
8 of the crime with a “Victims of Domestic Violence” card, as
9 specified in subparagraph (H) of paragraph (9) of subdivision (c)
10 of Section 13701.

11 (2) The victim or person to whom information is disseminated
12 pursuant to this subdivision may disclose it as he or she deems
13 necessary to protect himself or herself or another person from
14 bodily harm by the person who is the subject of the record.

15 SEC. 2. Section 16520 of the Penal Code is amended to read:

16 16520. (a) As used in this part, “firearm” means a device,
17 designed to be used as a weapon, from which is expelled through
18 a barrel, a projectile by the force of an explosion or other form of
19 combustion.

20 (b) As used in the following provisions, “firearm” includes the
21 frame or receiver of the weapon:

- 22 (1) Section 16550.
- 23 (2) Section 16730.
- 24 (3) Section 16960.
- 25 (4) Section 16990.
- 26 (5) Section 17070.
- 27 (6) Section 17310.
- 28 (7) Sections 26500 to 26588, inclusive.
- 29 (8) Sections 26600 to 27140, inclusive.
- 30 (9) Sections 27400 to 28000, inclusive.
- 31 (10) Section 28100.
- 32 (11) Sections 28400 to 28415, inclusive.
- 33 (12) Sections 29010 to 29150, inclusive.
- 34 (13) Sections 29610 to 29750, inclusive.
- 35 (14) Sections 29800 to 29905, inclusive.
- 36 (15) Sections 30150 to 30165, inclusive.
- 37 (16) Section 31615.
- 38 (17) Sections 31705 to 31830, inclusive.
- 39 (18) Sections 34355 to 34370, inclusive.

1 (19) Sections 8100, 8101, and 8103 of the Welfare and
2 Institutions Code.

3 (c) As used in the following provisions, “firearm” also includes
4 a rocket, rocket propelled projectile launcher, or similar device
5 containing an explosive or incendiary material, whether or not the
6 device is designed for emergency or distress signaling purposes:

7 (1) Section 16750.

8 (2) Subdivision (b) of Section 16840.

9 (3) Section 25400.

10 (4) Sections 25850 to 26025, inclusive.

11 (5) Subdivisions (a), (b), and (c) of Section 26030.

12 (6) Sections 26035 to 26055, inclusive.

13 (d) As used in the following provisions, “firearm” does not
14 include an unloaded antique firearm:

15 (1) Subdivisions (a) and (c) of Section 16730.

16 (2) Section 16550.

17 (3) Section 16960.

18 (4) Section 17310.

19 (5) Chapter 6 (commencing with Section 26350) of Division 5
20 of Title 4.

21 (6) Chapter 7 (commencing with Section 26400) of Division 5
22 of Title 4.

23 (7) Sections 26500 to 26588, inclusive.

24 (8) Sections 26700 to 26915, inclusive.

25 (9) Section 27510.

26 (10) Section 27530.

27 (11) Section 27540.

28 (12) Section 27545.

29 (13) Sections 27555 to 27570, inclusive.

30 (14) Sections 29010 to 29150, inclusive.

31 (15) Section 25135.

32 (e) As used in Sections 34005 and 34010, “firearm” does not
33 include a destructive device.

34 (f) As used in Sections 17280 and 24680, “firearm” has the
35 same meaning as in Section 922 of Title 18 of the United States
36 Code.

37 (g) As used in Sections 29010 to 29150, inclusive, “firearm”
38 includes the unfinished frame or receiver of a weapon that can be
39 readily converted to the functional condition of a finished frame
40 or receiver.

1 SEC. 3. Section 16540 of the Penal Code is amended to read:

2 16540. As used in Section 25135 and Division 2 (commencing
3 with Section 23620) of Title 4, “firearm safety device” means a
4 device other than a gun safe that locks and is designed to prevent
5 children and unauthorized users from firing a firearm. The device
6 may be installed on a firearm, be incorporated into the design of
7 the firearm, or prevent access to the firearm.

8 SEC. 4. Section 16850 of the Penal Code is amended to read:

9 16850. As used in Sections 17740, 23925, 25105, 25205,
10 23135, and 25610, in Article 3 (commencing with Section 25505)
11 of Chapter 2 of Division 5 of Title 4, in Chapter 6 (commencing
12 with Section 26350) of Division 5 of Title 4, and in Chapter 7
13 (commencing with Section 26400) of Division 5 of Title 4, “locked
14 container” means a secure container that is fully enclosed and
15 locked by a padlock, keylock, combination lock, or similar locking
16 device. The term “locked container” does not include the utility
17 or glove compartment of a motor vehicle.

18 SEC. 5. Section 17060 is added to the Penal Code, to read:

19 17060. As used in Section 25135, “residence” means any
20 structure intended or used for human habitation, including, but not
21 limited to, houses, condominiums, rooms, motels, hotels,
22 time-shares, and recreational or other vehicles where human
23 habitation occurs.

24 SEC. 6. Section 23510 of the Penal Code is amended to read:

25 23510. (a) For purposes of Sections 25400 and 26500, Sections
26 27500 to 27590, inclusive, Section 28100, Sections 29610 to
27 29750, inclusive, Sections 29800 to 29905, inclusive, and Section
28 31615 of this code, and any provision listed in subdivision (a) of
29 Section 16585 of this code, and Sections 8100, 8101, and 8103 of
30 the Welfare and Institutions Code, notwithstanding the fact that
31 the term “any firearm” may be used in those sections, each firearm
32 or the frame or receiver of each firearm constitutes a distinct and
33 separate offense under those sections.

34 (b) For purposes of Section 25135, notwithstanding the fact that
35 the term “any firearm” may be used in that section, each firearm
36 constitutes a distinct and separate offense under that section.

37 SEC. 7. Section 25135 is added to the Penal Code, to read:

38 25135. (a) A person who is 18 years of age or older, and who
39 is the owner, lessee, renter, or other legal occupant of a residence,
40 who owns a firearm and who knows or has reason to know that

1 another person also residing therein is prohibited by state or federal
2 law from possessing, receiving, owning, or purchasing a firearm
3 shall not keep in that residence any firearm that he or she owns
4 unless one of the following applies:

5 (1) The firearm is maintained within a locked container.

6 (2) The firearm is disabled by a firearm safety device.

7 (3) The firearm is maintained within a locked gun safe.

8 (4) The firearm is maintained within a locked trunk.

9 (5) The firearm is locked with a locking device as described in
10 Section 16860, which has rendered the firearm inoperable.

11 (6) The firearm is carried on the person or within close enough
12 proximity thereto that the individual can readily retrieve and use
13 the firearm as if carried on the person.

14 (b) A violation of this section is a misdemeanor.

15 (c) The prohibition of this section is cumulative, and does not
16 restrict the application of any other law. However, an act or
17 omission punishable in different ways by different provisions of
18 law shall not be punished under more than one provision.

19 SEC. 8. Section 28220 of the Penal Code is amended to read:

20 28220. (a) Upon submission of firearm purchaser information,
21 the Department of Justice shall examine its records, as well as
22 those records that it is authorized to request from the State
23 Department of State Hospitals pursuant to Section 8104 of the
24 Welfare and Institutions Code, in order to determine if the
25 purchaser is a person described in subdivision (a) of Section 27535,
26 or is prohibited by state or federal law from possessing, receiving,
27 owning, or purchasing a firearm.

28 (b) To the extent that funding is available, the Department of
29 Justice may participate in the National Instant Criminal Background
30 Check System (NICS), as described in subsection (t) of Section
31 922 of Title 18 of the United States Code, and, if that participation
32 is implemented, shall notify the dealer and the chief of the police
33 department of the city or city and county in which the sale was
34 made, or if the sale was made in a district in which there is no
35 municipal police department, the sheriff of the county in which
36 the sale was made, that the purchaser is a person prohibited from
37 acquiring a firearm under federal law.

38 (c) If the department determines that the purchaser is prohibited
39 by state or federal law from possessing, receiving, owning, or
40 purchasing a firearm or is a person described in subdivision (a) of

1 Section 27535, it shall immediately notify the dealer and the chief
2 of the police department of the city or city and county in which
3 the sale was made, or if the sale was made in a district in which
4 there is no municipal police department, the sheriff of the county
5 in which the sale was made, of that fact.

6 (d) If the department determines that the copies of the register
7 submitted to it pursuant to subdivision (d) of Section 28210 contain
8 any blank spaces or inaccurate, illegible, or incomplete information,
9 preventing identification of the purchaser or the handgun or other
10 firearm to be purchased, or if any fee required pursuant to Section
11 28225 is not submitted by the dealer in conjunction with
12 submission of copies of the register, the department may notify
13 the dealer of that fact. Upon notification by the department, the
14 dealer shall submit corrected copies of the register to the
15 department, or shall submit any fee required pursuant to Section
16 28225, or both, as appropriate and, if notification by the department
17 is received by the dealer at any time prior to delivery of the firearm
18 to be purchased, the dealer shall withhold delivery until the
19 conclusion of the waiting period described in Sections 26815 and
20 27540.

21 (e) If the department determines that the information transmitted
22 to it pursuant to Section 28215 contains inaccurate or incomplete
23 information preventing identification of the purchaser or the
24 handgun or other firearm to be purchased, or if the fee required
25 pursuant to Section 28225 is not transmitted by the dealer in
26 conjunction with transmission of the electronic or telephonic
27 record, the department may notify the dealer of that fact. Upon
28 notification by the department, the dealer shall transmit corrections
29 to the record of electronic or telephonic transfer to the department,
30 or shall transmit any fee required pursuant to Section 28225, or
31 both, as appropriate, and if notification by the department is
32 received by the dealer at any time prior to delivery of the firearm
33 to be purchased, the dealer shall withhold delivery until the
34 conclusion of the waiting period described in Sections 26815 and
35 27540.

36 ~~(f) (1) If the department has not completed the examination of~~
37 ~~its records pursuant to subdivision (a) within two days prior to the~~
38 ~~conclusion of the waiting period described in Sections 26815 and~~
39 ~~27540, the department shall notify the dealer of this fact and the~~

1 ~~dealer shall withhold delivery until seven days have elapsed after~~
2 ~~this notification is received by the dealer.~~

3 ~~(2) If the dealer is conducting the transaction pursuant to Section~~
4 ~~28050, paragraph (1) shall also preclude the return of the firearm~~
5 ~~to the person selling, loaning, or transferring the firearm until seven~~
6 ~~days have elapsed after the notification is received by the dealer.~~

7 *(f) (1) (A) The department shall immediately notify the dealer*
8 *to delay the transfer of the firearm to the purchaser if the records*
9 *of the department, or the records available to the department in*
10 *the National Instant Criminal Background Check System, indicate*
11 *either of the following:*

12 *(i) The purchaser has been taken into custody and placed in a*
13 *facility for mental health treatment or evaluation and may be a*
14 *person described in Section 8100 or 8103 of the Welfare and*
15 *Institutions Code and the department is unable to ascertain whether*
16 *the purchaser is a person who is prohibited from possessing,*
17 *receiving, owning, or purchasing a firearm, pursuant to Section*
18 *8100 or 8103 of the Welfare and Institutions Code, prior to the*
19 *conclusion of the waiting period described in Sections 26815 and*
20 *27540.*

21 *(ii) The purchaser has been arrested for, or charged with, a*
22 *crime that would make him or her, if convicted, a person described*
23 *in subdivision (a) of Section 27535 or prohibited by state or federal*
24 *law from possessing, receiving, owning, or purchasing a firearm,*
25 *and the department is unable to ascertain whether the purchaser*
26 *was convicted of that offense prior to the conclusion of the waiting*
27 *period described in Sections 26815 and 27540.*

28 *(B) The dealer shall provide the purchaser with information*
29 *about the manner in which he or she may contact the department*
30 *regarding the delay described in subparagraph (A).*

31 *(2) The department shall notify the purchaser by mail regarding*
32 *the delay and explain the process by which the purchaser may*
33 *obtain a copy of the criminal or mental health record the*
34 *department has on file for the purchaser. Upon receipt of that*
35 *criminal or mental health record, the purchaser shall report any*
36 *inaccuracies or incompleteness to the department on an approved*
37 *form.*

38 *(3) If the department ascertains the final disposition of the arrest*
39 *or criminal charge, or the outcome of the mental health treatment*
40 *or evaluation, as described in paragraph (1), after the waiting*

1 *period described in Sections 26815 and 27540, but within 30 days*
2 *of the dealer's original submission of the purchaser information*
3 *to the department pursuant to this section, the department shall*
4 *do the following:*

5 *(A) If the purchaser is not a person described in subdivision (a)*
6 *of Section 27535, and is not prohibited by state or federal law,*
7 *including, but not limited to, Section 8100 or 8103 of the Welfare*
8 *and Institutions Code, from possessing, receiving, owning, or*
9 *purchasing a firearm, the department shall immediately notify the*
10 *dealer of that fact and the dealer may transfer the firearm to the*
11 *purchaser, upon the dealer's recording on the register or record*
12 *of electronic transfer the date that the firearm is transferred.*

13 *(B) If the purchaser is a person described in subdivision (a) of*
14 *Section 27535, or is prohibited by state or federal law, including,*
15 *but not limited to, Section 8100 or 8103 of the Welfare and*
16 *Institutions Code, from possessing, receiving, owning, or*
17 *purchasing a firearm, the department shall immediately notify the*
18 *dealer and the chief of the police department in the city or city and*
19 *county in which the sale was made, or if the sale was made in a*
20 *district in which there is no municipal police department, the sheriff*
21 *of the county in which the sale was made, of that fact in compliance*
22 *with subdivision (c) of Section 28220.*

23 *(4) If the department is unable to ascertain the final disposition*
24 *of the arrest or criminal charge, or the outcome of the mental*
25 *health treatment or evaluation, as described in paragraph (1),*
26 *within 30 days of the dealer's original submission of purchaser*
27 *information to the department pursuant to this section, the*
28 *department shall immediately notify the dealer and the dealer may*
29 *transfer the firearm to the purchaser, upon the dealer's recording*
30 *on the register or record of electronic transfer the date that the*
31 *firearm is transferred.*

32 SEC. 9. Section 28255 is added to the Penal Code, to read:

33 28255. Commencing January 1, 2015, if after the conclusion
34 of the waiting period described in Sections 26815 and 27540, the
35 individual named in the application as the purchaser of the firearm
36 takes possession of the firearm set forth in the application to
37 purchase, the dealer shall notify the Department of Justice of that
38 fact in a manner and within a time period specified by the
39 department, and with sufficient information to identify the
40 purchaser and the firearm that the purchaser took possession of.

1 SEC. 10. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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