

# Senate Bill 97

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that Director of Department of Consumer and Business Services must act as, or acknowledge another regulatory official as, group-wide supervisor for internationally active insurance group. Specifies criteria for and conditions under which director must assume authority to act as group-wide supervisor or acknowledge other regulatory official's authority as group-wide supervisor. Specifies actions director may take as group-wide supervisor.

Requires insurer or insurance group to submit corporate governance annual disclosure to director, or other regulatory official in lead state, by June 1 of each year. Specifies corporate level of organization at which insurer or insurance group may choose to make corporate governance annual disclosure.

Specifies confidentiality requirements for documents, materials and other information that director receives, obtains, creates or discloses to, or receives in disclosure from, another person. Specifies conditions under which director may share documents, materials or other information and requirements for recipients of shared documents, materials or other information.

Becomes operative on January 1, 2018.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to modernizing insurance corporate governance; creating new provisions; amending ORS  
3 732.548 and 732.650; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 732.517**  
6 **to 732.592.**

7 **SECTION 2. (1) The Director of the Department of Consumer and Business Services**  
8 **shall:**

9 (a) Act, in accordance with the provisions of this section, as the group-wide supervisor  
10 for any internationally active insurance group; or

11 (b) Acknowledge another regulatory official as the group-wide supervisor for an interna-  
12 tionally active insurance group if the internationally active insurance group:

13 (A) Does not have substantial insurance operations in the United States;

14 (B) Has substantial insurance operations in the United States but not in this state; or

15 (C) Has substantial insurance operations in this state but the director determines under  
16 criteria set forth in subsections (2) and (6) of this section that the other regulatory official  
17 is the appropriate group-wide supervisor.

18 (2) The director, in cooperation with other state, federal and international regulatory  
19 agencies, shall identify a single group-wide supervisor for each internationally active insur-  
20 ance group. The director may determine that the director is the appropriate group-wide  
21 supervisor for an internationally active insurance group with substantial insurance oper-  
22 ations in this state or the director may determine that another regulatory official is the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 appropriate group-wide supervisor. In making the determination, the director shall consider:

2 (a) Where the insurers that have the largest share of the internationally active insurance  
3 group's written premiums, assets or liabilities are domiciled;

4 (b) Where the top-tier insurers within the internationally active insurance group's in-  
5 surance holding company system are domiciled;

6 (c) Where the internationally active insurance group has executive offices or the group's  
7 largest operational offices;

8 (d) Whether another regulatory official is acting, or seeks to act, as the group-wide  
9 supervisor for the internationally active insurance group under a regulatory system that the  
10 director determines is:

11 (A) Substantially similar to the regulations set forth in the Insurance Code; or

12 (B) Otherwise sufficient to enable the regulatory official to engage in group-wide super-  
13 vision and enterprise risk analysis and to cooperate with other regulatory officials; and

14 (e) Whether another regulatory official that is acting, or seeks to act, as the group-wide  
15 supervisor provides the director with a reasonable degree of reciprocal acknowledgment and  
16 cooperation.

17 (3) A regulatory official that the director determines under subsection (2) of this section  
18 is the appropriate group-wide supervisor for an internationally active insurance group may  
19 in turn acknowledge a different regulatory official as the appropriate group-wide supervisor.  
20 Before acknowledging another regulatory official as an appropriate group-wide supervisor, a  
21 regulatory official shall:

22 (a) Consider the criteria set forth in subsection (2) of this section;

23 (b) Cooperate with and obtain acknowledgment from other regulatory officials with re-  
24 sponsibility for supervising the internationally active insurance group; and

25 (c) Consult with the internationally active insurance group.

26 (4) Notwithstanding any other provision of this section or section 3 of this 2017 Act, the  
27 director shall acknowledge another regulatory official that is acting as a group-wide super-  
28 visor for an internationally active insurance group unless a material change in the interna-  
29 tionally active insurance group requires the director to make a determination under  
30 subsection (2) of this section as to the appropriate group-wide supervisor for the interna-  
31 tionally active insurance group. For purposes of this determination, a material change is:

32 (a) Insurers domiciled within this state come to hold the largest share of the interna-  
33 tionally active insurance group's written premiums, assets or liabilities; or

34 (b) The top-tier insurers within the internationally active insurance group's insurance  
35 holding company system become domiciled in this state.

36 (5) The director, in accordance with ORS 732.584, may order an insurer registered under  
37 ORS 732.551 to produce any information the director requires to determine whether the di-  
38 rector may act as, or must acknowledge another regulatory official as, the group-wide  
39 supervisor for an internationally active insurance group. Before determining that the direc-  
40 tor is the appropriate group-wide supervisor for an internationally active insurance group,  
41 the director shall inform the insurer that provided the information and the controlling entity  
42 within the internationally active insurance group, and give the internationally active insur-  
43 ance group at least 30 days in which to provide any additional information that may relate  
44 to the director's determination. The director shall identify internationally active insurance  
45 groups for which the director acts as the group-wide supervisor on the Department of Con-

1 **sumer and Business Services website.**

2 **(6) As the group-wide supervisor for an internationally active insurance group, the di-**  
3 **rector may:**

4 **(a) Assess enterprise risks within the internationally active insurance group to evaluate**  
5 **whether persons who manage members of the internationally active insurance group that**  
6 **are engaged in transacting insurance have identified the members' material financial condi-**  
7 **tion and liquidity risks and have established reasonable and effective mitigation measures;**

8 **(b) Request from any member of an internationally active insurance group subject to the**  
9 **director's supervision information that is necessary and appropriate to enable the director**  
10 **to assess enterprise risk for the member, including information about the member's:**

11 **(A) Governance, risk assessment and management;**

12 **(B) Capital adequacy; and**

13 **(C) Material intercompany transactions;**

14 **(c) Require members of internationally active insurance groups to develop and implement**  
15 **reasonable measures to enable the members to timely recognize and mitigate enterprise**  
16 **risks and, if necessary, assist the members or ask regulatory officials in jurisdictions in**  
17 **which the members are domiciled to compel the members to develop and implement the**  
18 **measures;**

19 **(d) Communicate and share information, including through a supervisory college de-**  
20 **scribed in ORS 732.571, with other state, federal and international regulatory agencies that**  
21 **have authority over members of internationally active insurance groups, subject to the**  
22 **confidentiality provisions of ORS 705.137, 705.138, 705.139 and 732.586;**

23 **(e) Enter into agreements with, or obtain information from, any insurer registered under**  
24 **ORS 732.551, any member of an internationally active insurance group or any other state,**  
25 **federal or international regulatory agency with authority over the internationally active in-**  
26 **surance group in order to clarify or provide a basis for the director's authority as a group-**  
27 **wide supervisor, provided that the agreements or information:**

28 **(A) Enable the director to resolve disputes with other regulatory officials; and**

29 **(B) Will not serve as evidence in any proceeding that an insurer or person within an in-**  
30 **surance holding company system that is not domiciled or organized in this state is trans-**  
31 **acting insurance in this state or is otherwise subject to the jurisdiction of this state; or**

32 **(f) Perform any other activities the director deems necessary to exercise the functions**  
33 **of a group-wide supervisor, provided the activities are consistent with the authority and the**  
34 **purposes set forth in this section.**

35 **(7)(a) The director may cooperate, including through a supervisory college described in**  
36 **ORS 732.571, with another regulatory official from a jurisdiction that the National Associ-**  
37 **ation of Insurance Commissioners has not accredited in the regulatory official's role as a**  
38 **group-wide supervisor if:**

39 **(A) The director acknowledges the regulatory official as a group-wide supervisor;**

40 **(B) The director's cooperation complies with the laws of this state; and**

41 **(C) The regulatory official cooperates with the director's activities as a group-wide**  
42 **supervisor for other internationally active insurance groups as appropriate.**

43 **(b) The director may refuse to acknowledge and cooperate with a regulatory official who**  
44 **does not reciprocate the director's acknowledgment and cooperation under this subsection.**

45 **(8) The director may enter into agreements with or obtain information from an insurer**

1 registered under ORS 732.551, an affiliate of the insurer and any other state, federal or  
 2 international regulatory agency if the agreement or information clarifies or provides the  
 3 basis for a regulatory official's authority as a group-wide supervisor.

4 (9) An insurer that is subject to this section, or that is a member of an internationally  
 5 active insurance group that is subject to this section, shall pay the director's reasonable  
 6 expenses of administering this section, including expenses associated with engaging attor-  
 7 neys, actuaries or other professionals and reasonable travel expenses.

8 **SECTION 3.** An insurance holding company system that is not an internationally active  
 9 insurance group may request that the Director of the Department of Consumer and Business  
 10 Services determine or acknowledge a group-wide supervisor for the insurance holding com-  
 11 pany system in accordance with section 2 of this 2017 Act.

12 **SECTION 4.** Sections 5 to 8 of this 2017 Act are added to and made a part of ORS 732.650  
 13 to 732.672.

14 **SECTION 5.** (1) An insurer, or the insurance group of which an insurer is a member, not  
 15 later than June 1 of each year shall submit to the Director of the Department of Consumer  
 16 and Business Services, or to the chief insurance regulatory official in the state that the di-  
 17 rector determines is the lead state for the insurance group, a corporate governance annual  
 18 disclosure that has the information described in section 6 of this 2017 Act. The director shall  
 19 determine the lead state in accordance with procedures that the director adopts by rule after  
 20 considering procedures that are set forth in a financial analysis handbook that the National  
 21 Association of Insurance Commissioners has adopted. An insurer or a member of an insur-  
 22 ance group that is not subject to the requirement under this subsection to submit a disclo-  
 23 sure shall nevertheless submit the disclosure at the director's request.

24 (2) The chief executive officer or corporate secretary of an insurer or insurance group  
 25 shall sign the corporate governance annual disclosure and attest that to the best of the  
 26 officer's or secretary's belief and knowledge the insurer or insurance group has implemented  
 27 the corporate governance practices identified in the disclosure and that the insurer's or in-  
 28 surance group's board of directors, or an appropriate committee of the board of directors,  
 29 has received a copy of the disclosure.

30 (3)(a) An insurer or insurance group that submits a corporate governance annual dis-  
 31 closure under subsection (1) of this section may provide information in the disclosure:

32 (A) At the level of the individual legal entity, an intermediate holding company or the  
 33 controlling parent company, depending on how the insurer or insurance group has structured  
 34 corporate governance;

35 (B) At the level at which the insurer or insurance group determines the extent to which  
 36 the insurer or insurance group will accept risk;

37 (C) At the level at which the insurer or insurance group collectively oversees or coordi-  
 38 nates and exercises supervision over the insurer's or insurance group's earnings, capital,  
 39 liquidity operations and reputation; or

40 (D) At the level at which legal liability for failing in the duties of general corporate  
 41 governance would occur.

42 (b) An insurer or insurance group that determines the level at which the insurer or in-  
 43 surance group provides information in the corporate governance annual disclosure under  
 44 paragraph (a)(B), (C) or (D) of this subsection shall indicate which criteria the insurer or  
 45 insurance group used for the disclosure and explain any subsequent changes in the level at

1 which the disclosure occurs.

2 (4) The director shall review the corporate governance annual disclosure and any other  
3 information the director obtains by request under procedures the director adopts by rule.

4 (5) An insurer or insurance group that provides information that is substantially similar  
5 to the information required under this section or section 6 of this 2017 Act in other docu-  
6 ments that the insurer or insurance group submits to the director, including proxy state-  
7 ments in conjunction with Form B requirements or other state or federal filings, need not  
8 duplicate the information in the corporate governance annual disclosure, but must include  
9 in the documents the insurer or insurance group submits to the director a cross-reference  
10 to documents that have the required information.

11 **SECTION 6.** (1) An insurer or insurance group has discretion as to the form and content  
12 of the insurer's or insurance group's responses to inquiries in a corporate governance annual  
13 disclosure so long as the responses provide information the Director of the Department of  
14 Consumer and Business Services requires to understand the insurer's or insurance group's  
15 corporate governance structure, policies and practices. The director may request additional  
16 information the director deems material and necessary to enable a clear understanding of  
17 the corporate governance policies and the reporting, information systems or controls that  
18 implement the policies.

19 (2) Notwithstanding the discretion permitted to an insurer or insurance group under  
20 subsection (1) of this section, the insurer or insurance group shall prepare the corporate  
21 governance annual disclosure in a manner consistent with rules the director adopts under  
22 section 5 of this 2017 Act. The insurer or insurance group shall maintain documentation and  
23 supporting information for the corporate governance annual disclosure and make the docu-  
24 mentation and supporting information available during an examination of the insurer or  
25 insurance group or otherwise at the director's request.

26 **SECTION 7.** (1)(a) Documents, materials or other information, including a corporate  
27 governance annual disclosure, that the Director of the Department of Consumer and Busi-  
28 ness Services discloses to, or receives in a submission or disclosure from, another person  
29 or otherwise possesses, controls, obtains or creates in accordance with section 5 or 6 of this  
30 2017 Act is proprietary, confidential and privileged and is not subject to:

31 (A) Disclosure under ORS 192.410 to 192.505;

32 (B) Subpoena; or

33 (C) Discovery and is not admissible in evidence in a private civil action.

34 (b) The director may use documents, materials or other information described in para-  
35 graph (a) of this subsection in any regulatory or legal action to carry out the director's of-  
36 ficial duties without the prior written consent of the insurer or insurance group that  
37 provided or served as a source or subject of the documents, materials or other information  
38 but the director may not otherwise make the documents, materials or other information  
39 available to the public without prior written consent from the insurer or insurance group.

40 (c) The director, any person that acted under the director's authority in an examination  
41 or other regulatory action or any person that under section 5 or 6 of this 2017 Act received  
42 shared documents, materials or other information described in paragraph (a) of this sub-  
43 section may not testify concerning the documents, materials or other information in any  
44 private civil action.

45 (2)(a) The director, in performing the director's regulatory duties, may:

1 (A) Share documents, materials and other information described in subsection (1)(a) of  
 2 this section, including information in or related to a corporate governance annual disclosure,  
 3 with other state, federal or international regulatory agencies, including members of a su-  
 4 pervisory college described in ORS 732.571, with the National Association of Insurance Com-  
 5 missioners and with consultants identified in section 8 of this 2017 Act if a regulatory agency,  
 6 the association or a consultant requests the documents, materials or other information and:

7 (i) Agrees in writing to keep the documents, materials and other information confiden-  
 8 tial; and

9 (ii) Verifies in writing that the regulatory agency, the association or the consultant has  
 10 legal authority to keep the documents, materials and other information confidential.

11 (B) Receive documents, materials and other information described in subsection (1)(a)  
 12 of this section from the National Association of Insurance Commissioners and other state,  
 13 federal and international regulatory agencies, including members of a supervisory college  
 14 described in ORS 732.571.

15 (b) The director shall keep confidential any documents, materials or other information  
 16 the director receives from any of the persons described in paragraph (a)(B) of this subsection  
 17 in accordance with the laws that apply to the confidentiality of the documents, materials or  
 18 other information in the jurisdiction in which the person that is the source or subject of the  
 19 documents, materials or other information is domiciled or exercises regulatory authority.

20 (3) The director's or another person's disclosure of documents, materials or other infor-  
 21 mation described in this section does not waive any privilege or claim of confidentiality that  
 22 otherwise applies to the documents, materials or other information.

23 **SECTION 8.** (1)(a) The Director of the Department of Consumer and Business Services,  
 24 at the expense of the insurer or insurance group from which the director receives a corpo-  
 25 rate governance annual disclosure, may retain a consultant, including an attorney, actuary,  
 26 accountant or other expert, whenever the director reasonably requires assistance to review  
 27 the corporate governance annual disclosure or related information and to evaluate the  
 28 insurer's or insurance group's compliance with sections 5, 6, 7 and 8 of this 2017 Act.

29 (b) A consultant that the director retains under paragraph (a) of this subsection shall:

30 (A) Act solely under the director's supervision;

31 (B) Serve only in an advisory capacity; and

32 (C) Comply with the requirements for confidentiality set forth for the director in section  
 33 7 of this 2017 Act.

34 (2) The director may not retain a consultant unless the consultant demonstrates to the  
 35 director that the consultant:

36 (a) Does not have a conflict of interest; and

37 (b) Has internal procedures that enable the consultant to:

38 (A) Monitor and avoid conflicts of interest; and

39 (B) Comply with the requirements for confidentiality set forth for the director in section  
 40 7 of this 2017 Act.

41 (3) The director shall enter into a written agreement with a consultant that the director  
 42 retains under subsection (1) of this section, or with the National Association of Insurance  
 43 Commissioners if the director consults with the association, that specifies how the consult-  
 44 ant or association may share and use documents, materials or other information described  
 45 in section 7 (1)(a) of this 2017 Act. The terms of the agreement must require the consultant

1 or association to obtain written permission from the insurer or insurance group that is the  
 2 source or subject of the documents, materials or other information before making the doc-  
 3 uments, materials or other information public and must specify:

4 (a) Procedures and protocols for keeping the documents, materials and other information  
 5 secure and confidential;

6 (b) Conditions under which the consultant or the association may share the documents,  
 7 materials or other information, including requirements that the recipient of the documents,  
 8 materials or other information must:

9 (A) Agree in writing to keep the documents, materials and other information secure and  
 10 confidential; and

11 (B) Verify in writing that the consultant or association has legal authority to keep the  
 12 documents, materials or other information secure and confidential;

13 (c) That the consultant or association may share the documents, materials and other  
 14 information only with regulatory agencies in states that are domiciles of the insurer that is  
 15 the source or subject of the documents, materials or other information or of an insurer  
 16 within the insurance group that is the source or subject of the documents, materials or  
 17 other information;

18 (d) That the director retains ownership and control of the documents, materials or other  
 19 information and that the consultant or association may use the documents, materials or  
 20 other information only in accordance with the director’s specifications or under the  
 21 director’s supervision;

22 (e) That the consultant or association may not store the documents, materials or other  
 23 information in a permanent database or another form after the consultant or association  
 24 completes the consultation or finishes assisting the director;

25 (f) That the consultant or association must immediately notify the director and the  
 26 insurer or insurance group that is the source or subject of the documents, materials or other  
 27 information if the consultant or association receives a subpoena or other request to disclose  
 28 or produce the documents, materials or other information; and

29 (g) That the consultant or association agrees to permit the insurer or insurance group  
 30 that is the source or subject of the documents, materials or other information to intervene  
 31 in any administrative or judicial proceeding that might require the consultant or association  
 32 to disclose or produce the documents, materials or other information.

33 **SECTION 9.** ORS 732.548 is amended to read:

34 732.548. As used in ORS 732.517 to 732.592:

35 (1) “Affiliate” means a person that directly or indirectly, through one or more intermediaries,  
 36 controls, is controlled by, or is under common control with, another person.

37 (2) “Control” means possessing the direct or indirect power to manage a person or set the  
 38 person’s policies, whether by owning voting securities, by contract other than a commercial contract  
 39 for goods or nonmanagement services, or otherwise, unless the power is the result of an official  
 40 position or corporate office the person holds.

41 (3) “Enterprise risk” means an activity, circumstance, event or series of events that involve one  
 42 or more of an insurer’s affiliates and that, if not remedied promptly, are likely to have an adverse  
 43 material effect on the insurer’s or the insurance holding company system’s financial condition or  
 44 liquidity, including but not limited to an activity, circumstance, event or series of events that would  
 45 cause the insurer’s risk-based capital to fall into company action level or cause the Director of the

1 Department of Consumer and Business Services to determine under ORS 731.385 that the insurer is  
2 in hazardous financial condition.

3 **(4) “Group-wide supervisor” means a regulatory official that has the authority to conduct**  
4 **and coordinate supervisory activities for an internationally active insurance group under**  
5 **section 2 of this 2017 Act.**

6 [(4)] (5) “Insurance holding company system” means two or more affiliated persons, one or more  
7 of which is an insurer, and includes a financial holding company as described in section 103 of the  
8 federal Gramm-Leach-Bliley Act (P.L. 106-102).

9 [(5)] (6) “Insurer” has the meaning given that term in ORS 731.106 but does not include an  
10 agency, authority or instrumentality of the United States, the Commonwealth of Puerto Rico, an-  
11 other state or a political subdivision of another state.

12 **(7) “Internationally active insurance group” means an insurance holding company system**  
13 **that includes an insurer that is registered under ORS 732.551 and that:**

14 **(a) Writes premiums in three or more countries;**

15 **(b) Writes 10 percent or more of the insurance holding company system’s total gross**  
16 **written premiums outside the United States; and**

17 **(c) Has \$50 billion or more of total assets, or \$10 billion or more of total gross written**  
18 **premiums, based on a three-year rolling average.**

19 [(6)(a)] (8)(a) “Person” means an individual, corporation, limited liability company, partnership,  
20 association, joint stock company, trust[,] or unincorporated organization, or [a similar] an entity or  
21 combination of entities [that are] **similar to the entities** described in this [subsection] **paragraph.**

22 (b) “Person” does not include:

23 (A) A joint venture partnership that is engaged exclusively in owning, managing, leasing or de-  
24 veloping real or tangible personal property; or

25 (B) For the purposes of ORS 732.518, 732.521, 732.523, 732.526 and 732.528, a securities broker  
26 that holds, in the usual and customary broker’s function, less than 20 percent of the voting securi-  
27 ties of an insurer or of any person that controls an insurer.

28 [(7)] (9) “Security holder” means a person that owns a security of another person, including a  
29 security denominated as common stock, preferred stock or a debt obligation and any instrument that  
30 is convertible into or that is evidence of the right to acquire the security of another person.

31 [(8)] (10) “Subsidiary” means an affiliate that a person controls directly or indirectly through  
32 one or more intermediaries.

33 [(9)] (11) “Voting security” means a security that entitles the owner or holder of the security  
34 to vote at a meeting of shareholders, including a security that is convertible into a voting security  
35 or that is evidence of a right to acquire a voting security.

36 **SECTION 10.** ORS 732.650 is amended to read:

37 732.650. As used in ORS 732.650 to 732.672:

38 **(1) “Corporate governance annual disclosure” means a report that an insurer or insur-**  
39 **ance group files with the Director of the Department of Consumer and Business Services in**  
40 **accordance with sections 5 and 6 of this 2017 Act.**

41 [(1)] (2) “Insurance group” means insurers and affiliates within an insurance holding company  
42 system, as defined in ORS 732.548.

43 [(2)] (3) “Insurer” has the meaning given that term in ORS 732.548.

44 [(3)] (4) “Own risk and solvency assessment” means a confidential internal assessment of the  
45 material and relevant risks associated with an insurer’s or insurance group’s business plan and of



1 the sufficiency of capital resources to support the business plan that the insurer or insurance group  
2 conducts and that is appropriate for the nature, scale and complexity of the insurer or insurance  
3 group.

4 [(4)] (5) "Own Risk and Solvency Assessment Guidance Manual" means the Own Risk and  
5 Solvency Assessment Guidance Manual that the National Association of Insurance Commissioners  
6 develops and adopts and that the Director of the Department of Consumer and Business Services  
7 by rule or order designates as guidance and standards for completing an own risk and solvency as-  
8 sessment.

9 [(5)] (6) "Own risk and solvency assessment summary report" means a confidential high-level  
10 summary of an insurer's or insurance group's own risk and solvency assessment.

11 **SECTION 11.** (1) Sections 2, 3, 5, 6, 7 and 8 of this 2017 Act and the amendments to ORS  
12 732.548 and 732.650 by sections 9 and 10 of this 2017 Act become operative January 1, 2018.

13 (2) The Director of the Department of Consumer and Business Services may adopt rules  
14 and take any action before the operative date specified in subsection (1) of this section that  
15 is necessary to enable the director, on and after the operative date specified in subsection  
16 (1) of this section, to exercise all of the duties, powers and functions conferred on the di-  
17 rector by sections 2, 3, 5, 6, 7 and 8 of this 2017 Act and the amendments to ORS 732.548 and  
18 732.650 by sections 9 and 10 of this 2017 Act.

19 **SECTION 12.** This 2017 Act being necessary for the immediate preservation of the public  
20 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
21 on its passage.

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