

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 2314

 By: McCall

7 AS INTRODUCED

8 An Act relating to liens; amending 42 O.S. 2011,
9 Section 91A, as last amended by Section 2, Chapter
10 316, O.S.L. 2016 (42 O.S. Supp. 2016, Section 91A),
11 which relates to liens for service on personal
12 property; modifying time allowed for resubmission of
13 title application; and providing an effective date.

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

14 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91A, as last
15 amended by Section 2, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2016,
16 Section 91A), is amended to read as follows:

17 Section 91A.

18 A. 1. a. This section applies to all types of personal property
19 other than:

20 (1) farm equipment as defined in Section 91.2 of this
21 title, and

22 (2) "Section 91 Personal Property" as defined in
23 Section 91 of this title.

1 b. This section applies to any vehicle, all-terrain
2 vehicle, utility vehicle, manufactured home,
3 motorcycle, boat, outboard motor, or trailer that is
4 excluded from coverage under subsection A of Section
5 91 of this title because the personal property:

6 (1) does not have a certificate of title, or

7 (2) has a certificate of title but does not have an
8 active lien recorded on the certificate of title,
9 or

10 (3) has a certificate of title that is not issued by
11 the Oklahoma Tax Commission or by a federally
12 recognized Indian tribe in the State of Oklahoma,
13 or

14 (4) is otherwise excluded by subparagraph b of
15 paragraph 1 of subsection A of Section 91 of this
16 title or subsection D of Section 91 of this
17 title.

18 c. If personal property has a certificate of title, or
19 would be required to have a certificate of title under
20 Oklahoma law, and is apparently covered both by this
21 section and by Sections 191 through 200 of this title,
22 the procedures set out in this section shall apply
23 instead of Sections 191 through 200 of this title. If
24 personal property without a certificate of title and

1 not required to be titled under Oklahoma law is
2 covered both by this section and Sections 191 through
3 200 of this title, the procedures set out in Sections
4 191 through 200 of this title shall apply instead of
5 this section.

6 2. a. Any person who, while lawfully in possession of an
7 article of personal property to which this section
8 applies, renders any service to the owner thereof by
9 furnishing storage, rental space, material, labor or
10 skill for the protection, improvement, safekeeping,
11 towing, right to occupy space, storage or carriage
12 thereof, has a special lien thereon, dependent on
13 possession, for the compensation, if any, which is due
14 to such person from the owner for such service.
15 Charges owed under a contract primarily for the
16 purpose of storage or rental of space shall be accrued
17 only at the regular periodic rate for storage or
18 rental as provided in the contract, adjusted for
19 partial periods of storage or rental.

20 b. Except for Class AA licensed wrecker towing charges,
21 the special lien shall be subordinate to any perfected
22 security interest unless the claimant complies with
23 the requirements of this section. Failure to comply
24 with any requirements of this section shall result in

1 denial of any title application and cause the special
2 lien to be subordinate to any perfected lien. Upon
3 such denial, the applicant shall be entitled to one
4 resubmission of the title application within ~~fifteen~~
5 ~~(15)~~ thirty (30) business days of receipt of the
6 denial, and proceed to comply with the requirements of
7 this section. "Failure to comply" includes, but is
8 not limited to:

- 9 (1) failure to timely provide additional
10 documentation supporting or verifying any entry
11 on submitted forms as requested by the Tax
12 Commission,
- 13 (2) failure to provide the documentation supporting
14 lawful possession as outlined in paragraph 3 of
15 subsection H of this section,
- 16 (3) claimant being other than the individual who
17 provided the service giving rise to the special
18 lien, as in subparagraph a of this paragraph,
- 19 (4) claimant not being in possession of the vehicle,
20 or
- 21 (5) notification and proceedings not accomplished in
22 accordance with subparagraph c of this paragraph,
23 and paragraph 3 of this subsection.
- 24

1 c. Any person claiming a lien under this section shall
2 request, within five (5) business days of performing
3 any service or work on the property, the Tax
4 Commission or other appropriate license agency to
5 furnish the name and address of the current owner of
6 and any lienholder upon the property. The Motor
7 Vehicle Division of the Tax Commission or appropriate
8 license agency shall respond in person or by mail to
9 the lien claimant within ten (10) business days of the
10 receipt of the request for information. The Tax
11 Commission shall render assistance to ascertain
12 ownership, if needed. The lien claimant shall send,
13 within seven (7) business days of receipt of the
14 requested information from the Oklahoma Tax Commission
15 or other license agency, a notice of the location of
16 the property by certified mail with return receipt
17 requested, postage prepaid, to the owner and any
18 lienholder of the vehicle at the addresses furnished.
19 The lien claimant may charge Twenty Dollars (\$20.00)
20 for processing plus the cost of postage if the notice
21 is timely sent pursuant to the requirements of this
22 subparagraph in addition to fees regulated by the
23 Oklahoma Corporation Commission for licensed wreckers.
24 If the lien claimant is unable to meet the time

1 requirements due to a lack of or an altered vehicle
2 identification number on the property, the lien
3 claimant shall proceed diligently to obtain the proper
4 vehicle identification number and shall meet the time
5 requirements on the notice once the vehicle
6 identification number is known. If the lien claimant
7 is required to send additional notices because of
8 change of ownership or lienholder after it has timely
9 complied with the requirements of this subparagraph,
10 the lien claimant shall remain in compliance if such
11 additional notices are sent within the required time
12 periods from the date of discovery of the new owners
13 or lienholders. The notice shall be in writing and
14 shall contain, but not be limited to, the following:

- 15 (1) a statement that the notice is a Notice of
16 Possessory Lien,
- 17 (2) the complete legal name, physical and mailing
18 address, and telephone number of the claimant,
- 19 (3) the complete legal name, physical and mailing
20 address of the person who requested that the
21 claimant render service to the owner by
22 furnishing material, labor or skill, storage, or
23 rental space, or the date the property was
24

1 abandoned if the claimant did not render any
2 other service,

3 (4) a description of the article of personal
4 property, and the complete physical and mailing
5 address of the location of the article of
6 personal property,

7 (5) the nature of the work, labor or service
8 performed, material furnished, or the storage or
9 rental arrangement, and the date thereof, and
10 written proof of authority to perform the work,
11 labor or service provided that, in the case of a
12 law enforcement directed tow, the logbook entry
13 prescribed in OAC 595:25-5-5 or the tow ticket as
14 defined by the Corporation Commission shall serve
15 as written proof of authority,

16 (6) the signature of the claimant which shall be
17 notarized and, if applicable, the signature of
18 the claimant's attorney. If the claimant is a
19 business, the name of the contact person
20 representing the business shall be shown. In
21 place of an original signature and notary seal, a
22 digital or electronic signature or seal shall be
23 accepted, and
24

1 (7) an itemized statement describing the date or
2 dates the labor or services were performed and
3 material furnished and the charges claimed for
4 each item, the totals of which shall equal the
5 total compensation claimed.

6 The lien claimant shall not be required to send the
7 notice required in this subparagraph if the property
8 is released to an interested party before the notice
9 is mailed and no additional charges or fees continue
10 to accrue. If a law enforcement agency has the
11 property towed to a law enforcement facility, the
12 person claiming a lien under this section shall not be
13 required to send notice until the property is released
14 by law enforcement to the claimant or the date which
15 claimant starts charging storage, whichever is
16 earlier. A lien claimant shall have an extension of
17 ten (10) business days to send the notice required in
18 this subparagraph if a state of emergency has been
19 declared in the county in which the property is
20 located.

21 d. Subparagraphs b and c of this paragraph shall not
22 apply to salvage pools as defined in Section 591.2 of
23 Title 47 of the Oklahoma Statutes.
24

1 3. The lien may be foreclosed by a sale of such personal
2 property upon the notice and in the manner following: The notice
3 shall be in writing and shall contain, but not be limited to:

4 a. the names of the owner and any other known party or
5 parties who may claim any interest in the property,

6 b. a description of the property to be sold, including a
7 visual inspection or a photograph if the property is a
8 motor vehicle, and the physical location of the
9 property,

10 c. the nature of the work, labor or service performed,
11 material furnished, or the storage or rental
12 arrangement, and the date thereof, and written proof
13 of authority to perform the work, labor or service
14 provided. In the case of a law enforcement directed
15 tow, the logbook entry prescribed in OAC 595:25-5-5 or
16 the tow ticket as defined by the Corporation
17 Commission, shall serve as written proof of authority,

18 d. the time and place of sale,

19 e. the name, telephone number, physical address and
20 mailing address of the claimant, and agent or
21 attorney, if any, foreclosing such lien. If the
22 claimant is a business, then the name of the contact
23 person representing the business must be shown. In
24 place of an original signature and notary seal, a

1 digital or electronic signature or seal shall be
2 accepted, and

3 f. itemized charges which shall equal the total
4 compensation claimed.

5 4. a. Such Notice of Sale shall be posted in two public
6 places in the county where the property is to be sold
7 at least ten (10) days before the time therein
8 specified for such sale, and a copy of the notice
9 shall be mailed to the owner and any other party
10 claiming any interest in the property, if known, at
11 their last-known post office address, by certified
12 mail, return receipt requested, at least ten (10) days
13 before the time therein specified for such sale. If
14 the item of personal property is a manufactured home,
15 notice shall also be sent by certified mail to the
16 county treasurer and to the county assessor of the
17 county where the manufactured home is located.

18 b. In the case of any item of personal property without a
19 certificate of title and not required to be titled
20 under Oklahoma law, a party who claims any interest in
21 the property shall include all owners of the property;
22 any secured party who has an active financing
23 statement on file with the county clerk of Oklahoma
24 County listing one or more owners of the property by

1 legal name as debtors and indicating a collateral
2 description that would include the property; and any
3 other person having any interest in the personal
4 property, of whom the claimant has actual notice.

5 c. In the case of personal property subject to this
6 section for which a certificate of title has been
7 issued by any jurisdiction, a party who claims any
8 interest in the property shall include all owners of
9 the article of personal property as indicated by the
10 certificate of title; lien debtors, if any, other than
11 the owners; any lienholder whose lien is noted on the
12 face of the certificate of title; and any other person
13 having any interest in the article of personal
14 property, of whom the claimant has actual notice.

15 d. When the jurisdiction of titling for a vehicle, all-
16 terrain vehicle, motorcycle, boat, outboard motor, or
17 trailer that is five (5) model years old or newer, or
18 a manufactured home that is fifteen (15) model years
19 old or newer, cannot be determined by ordinary means,
20 the claimant, the agent of the claimant, or the
21 attorney of the claimant, shall request, in writing,
22 that the Oklahoma Tax Commission Motor Vehicle
23 Division ascertain the jurisdiction where the vehicle
24 or manufactured home is titled. The Oklahoma Tax

1 Commission Motor Vehicle Division shall, within
2 fourteen (14) days from the date the request is
3 received, provide information as to the jurisdiction
4 where the personal property is titled. If the
5 Oklahoma Tax Commission Motor Vehicle Division is
6 unable to provide the information, it shall provide
7 notice that the record is not available.

- 8 e. When personal property is of a type that Oklahoma law
9 requires to be titled, the owner of record of that
10 property is unknown, and the jurisdiction of titling
11 and owner of record cannot be determined by ordinary
12 means and also, if applicable, cannot be determined in
13 accordance with the preceding subparagraph, then the
14 special lien may be foreclosed by publication of a
15 legal notice in a legal newspaper in the county where
16 the personal property is located, as defined in
17 Section 106 of Title 25 of the Oklahoma Statutes.
18 Such notice shall include the description of the
19 property by year, make, vehicle identification number
20 if available from the property, the name of the
21 individual who may be contacted for information, and
22 the telephone number of that person or the address
23 where the vehicle is located. The legal notice shall
24 be published once per week for three (3) consecutive

1 weeks. As soon as circumstances exist as described in
2 the first sentence of this subparagraph, the first
3 date of publication may occur even if the special lien
4 has not accrued for over thirty (30) days. The first
5 date available for public sale of the vehicle is the
6 day following publication of the final notice, but no
7 fewer than thirty (30) days after the lien has
8 accrued. When the owner of record is unknown, the
9 Notice of Sale nevertheless must be completed and
10 mailed to any known interested party by certified
11 mail. For purposes of this paragraph, interested
12 parties shall include all persons described in
13 subparagraph b or subparagraph c of this paragraph,
14 whichever is applicable, with the exception of any
15 owner who is unknown. Except in circumstances
16 described in paragraph 7 of this subsection that
17 provide for a shorter time period, the Notice of Sale
18 shall be posted in two public places in the county
19 where the property is to be sold at least ten (10)
20 days before the time therein specified for such sale,
21 and the Notice of Sale shall not be mailed until at
22 least thirty (30) days after the lien has accrued.

23 5. The lienor or any other person may in good faith become a
24 purchaser of the property sold.

1 6. Proceedings for foreclosure under this act shall not be
2 commenced until thirty (30) days after the lien has accrued, except
3 as provided elsewhere in Oklahoma law.

4 7. Notwithstanding any other provision of law, proceedings for
5 foreclosures for the storage of junk vehicles towed and stored
6 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by
7 Class AA wreckers listed with the Motor Vehicle Division of the
8 Department of Public Safety, may be commenced five (5) days after
9 the lien has accrued. For purposes of this paragraph, "junk
10 vehicles" means any vehicle that is more than ten (10) years old if
11 the cost of a comparable vehicle would be less than Three Hundred
12 Dollars (\$300.00) as quoted in the latest edition of the National
13 Automobile Dealers Association Official Used Car Guide or latest
14 monthly edition of any other nationally recognized published
15 guidebook, adjusting to the condition of the vehicle.

16 B. 1. a. Any person who is induced by means of a check or other
17 form of written order for immediate payment of money
18 to deliver up possession of an article of personal
19 property on which the person has a special lien
20 created by subsection A of this section, which check
21 or other written order is dishonored, or is not paid
22 when presented, shall have a lien for the amount
23 thereof upon the personal property.

1 b. The person claiming such lien shall, within thirty
2 (30) days from the date of dishonor of the check or
3 other written order for payment of money, file in the
4 office of the county clerk of the county in which the
5 property is situated a sworn statement that:

6 (1) the check or other written order for immediate
7 payment of money, copy thereof being attached,
8 was received for labor, material or supplies for
9 producing or repairing an article of personal
10 property, or for other specific property-related
11 services covered by this section,

12 (2) the check or other written order was not paid,
13 and

14 (3) the uttering of the check or other written order
15 constituted the means for inducing the person,
16 one possessed of a special lien created by
17 subsection A of this section upon the described
18 article of personal property, to deliver up the
19 article of personal property.

20 2. a. Any person who renders service to the owner of an
21 article of personal property by furnishing storage,
22 rental space, material, labor, or skill for the
23 protection, improvement, safekeeping, towing, right to
24 occupy space, storage, or carriage thereof shall have

1 a special lien on such property pursuant to this
2 section if such property is removed from the person's
3 possession, without such person's written consent or
4 without payment for such service.

5 b. The person claiming such lien shall, within five (5)
6 days of such nonauthorized removal, file in the office
7 of the county clerk of the county in which the
8 property is located, a sworn statement including:

9 (1) that services were rendered on or in relation to
10 the article of personal property by the person
11 claiming such lien,

12 (2) that the property was in the possession of the
13 person claiming the lien but such property was
14 removed without his or her written consent,

15 (3) an identifying description of the article of
16 personal property on or in relation to which the
17 service was rendered, and

18 (4) that the debt for the services rendered on or in
19 relation to the article of personal property was
20 not paid. Provided, if the unpaid total amount
21 of the debt for services rendered on or in
22 relation to the article of personal property is
23 unknown, an approximated amount of the debt due
24 and owing shall be included in the sworn

1 statement but such approximated debt may be
2 amended within thirty (30) days of such filing to
3 reflect the actual amount of the debt due and
4 owing.

5 3. The enforcement of the lien shall be within sixty (60) days
6 after filing the lien in the manner provided by law for enforcing
7 the lien of a security agreement and provided that the lien shall
8 not affect the rights of innocent, intervening purchasers without
9 notice.

10 C. If the person who renders service to the owner of an article
11 of personal property to which this section applies relinquishes or
12 loses possession of the article due to circumstances described in
13 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of
14 subsection B of this section, the person claiming the lien shall be
15 entitled to possession of the article until the amount due is paid,
16 unless the article is possessed by a person who became a bona fide
17 purchaser. Entitlement to possession shall be in accordance with
18 the following:

19 1. The claimant may take possession of an article pursuant to
20 this subsection only if the person obligated under the contract for
21 services has signed an acknowledgment of receipt of a notice that
22 the article may be subject to repossession. The notice and
23 acknowledgment pursuant to this subsection shall be:
24

- a. in writing and separate from the written contract for services, or
- b. printed on the written contract for services, credit agreement or other document which displays the notice in bold-faced, capitalized and underlined type, or is separated from surrounding written material so as to be conspicuous with a separate signature line;

2. The claimant may require the person obligated under the contract for services to pay the costs of repossession as a condition for reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article;

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

4. An article that is repossessed pursuant to this subsection shall be promptly delivered to the location where the services were performed. The article shall remain at the services location at all

1 times until the article is lawfully returned to the record owner or
2 a lienholder or is disposed of pursuant to this section.

3 D. 1. This section applies if a vehicle, all-terrain vehicle,
4 manufactured home, motorcycle, boat, outboard motor, or trailer has
5 a certificate of title issued by the Tax Commission or by a
6 federally recognized Indian tribe in Oklahoma, but there is no
7 active lien recorded on the certificate of title.

8 2. This section applies if a vehicle, all-terrain vehicle,
9 utility vehicle, motorcycle, boat, outboard motor or trailer has a
10 certificate of title issued by the Tax Commission or by a federally
11 recognized Indian tribe in Oklahoma, and there is an active lien
12 recorded on the certificate of title, but the lien is over fifteen
13 (15) years old.

14 3. This section applies if personal property to which Section
15 91 of this title otherwise would apply has been registered by the
16 Tax Commission or by a federally recognized Indian tribe in the
17 State of Oklahoma, and there is a lien of record but no certificate
18 of title has been issued.

19 4. This section applies if personal property to which Section
20 91 of this title otherwise would apply has not been registered by
21 either the Tax Commission or a federally recognized Indian tribe in
22 the State of Oklahoma, and no certificate of title has been issued,
23 but there is a lien of record.

1 5. This section applies to personal property that otherwise
2 would be covered by Section 91 of this title, except that the
3 services were rendered or the property was abandoned prior to
4 November 1, 2005.

5 6. This section applies to a vehicle, all-terrain vehicle,
6 utility vehicle, manufactured home, motorcycle, boat, outboard
7 motor, or trailer for which ownership cannot be determined by
8 ordinary means or by the Oklahoma Tax Commission Motor Vehicle
9 Division, as provided in subparagraphs d and e of paragraph 4 of
10 subsection A of this section, as applicable.

11 7. This section applies to items of personal property that are
12 not required by Oklahoma law to be titled, and that do not have a
13 certificate of title.

14 8. This section applies to salvage pools as defined in Section
15 591.2 of Title 47 of the Oklahoma Statutes.

16 9. This section applies to class AA licensed wrecker services
17 taking possession of a vehicle pursuant to an agreement with, or at
18 the direction of, or dispatched by a state or local law enforcement
19 or government agency, or pursuant to the abandoned vehicle removal
20 provisions of Section 954A of Title 47 of the Oklahoma Statutes with
21 respect to all types of personal property, regardless of whether
22 that personal property has a certificate of title.

23 10. For a vehicle abandoned at a salvage pool, if the cost of
24 repairing the vehicle for safe operation on the highway does not

1 exceed sixty percent (60%) of the fair market value of the vehicle
2 as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a
3 salvage title shall not be required.

4 E. A person who knowingly makes a false statement of a material
5 fact regarding the furnishing of storage, rental space, material,
6 labor or skill for the protection, improvement, safekeeping, towing,
7 right to occupy space, storage or carriage thereof in a proceeding
8 under this section, or attempts to use or uses the provisions of
9 this section to foreclose an owner or lienholder's interest in a
10 vehicle knowing that any of the statements made in the proceeding
11 are false, upon conviction, shall be guilty of a felony.

12 F. Upon receipt of notice of legal proceedings, the Tax
13 Commission shall cause the sale process to be put on hold until
14 notice of resolution of court proceedings is received from the
15 court. If such notice of commencement of court proceedings is not
16 filed with the Tax Commission, the possessory lien sale process may
17 continue.

18 G. No possessory lien sale shall be held on a Sunday.

19 H. For purposes of this section:

20 1. "Possession" includes actual possession and constructive
21 possession;

22 2. "Constructive possession" means possession by a person who,
23 although not in actual possession, does not have an intention to
24 abandon property, knowingly has both power and the intention at a

1 given time to exercise dominion or control over the property, and
2 who holds claim to such thing by virtue of some legal right;

3 3. "Lawfully in possession" means a person has documentation
4 from the owner or the owner's authorized agent, or an insurance
5 company or its authorized agent, authorizing the furnishing of
6 material, labor or storage, or that the property was authorized to
7 be towed to a repair facility.

8 Class AA wrecker services taking possession of a vehicle
9 pursuant to an agreement with, or at the direction of, or dispatched
10 by, a state or local law enforcement or government agency, or
11 pursuant to the abandoned vehicle removal provisions of Section 954A
12 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
13 in possession of the vehicle. If the person lacks such
14 documentation, the procedures established by this section shall not
15 apply; and

16 4. "Itemized charges" means total parts, total labor, total
17 towing fees, total storage fees, total processing fees and totals of
18 any other fee groups, the sum total of which shall equal the
19 compensation claimed.

20 I. For purposes of this section, the United States Postal
21 Service approved electronic equivalent of proof of return receipt
22 requested Form 3811 shall satisfy return receipt requested
23 documentation requirements.

1 J. If a person claiming a special lien pursuant to this section
2 fails to comply with any of the requirements of this section, any
3 interested party may proceed against the person claiming such lien
4 for all damages arising therefrom, including conversion, if the
5 article of personal property has been sold. If the notice or
6 notices required by this section shall be shown to be knowingly
7 false or fraudulent, the interested party shall be entitled to
8 treble damages. The prevailing party shall be entitled to all
9 costs, including reasonable attorney fees.

10 K. Any interested party shall be permitted to visually inspect
11 and verify the services rendered by the claimant prior to the sale
12 of the article of property during normal business hours. If the
13 claimant fails to allow any interested party to inspect the
14 property, the interested party shall mail a request for inspection
15 by certified mail, return receipt requested, to the claimant.
16 Within three (3) business days of receipt of the request for
17 inspection, the claimant shall mail a photograph of the property, by
18 certified mail, return receipt requested, and a date of inspection
19 within five (5) business days from the date of the notice to
20 inspect. The lienholder shall be allowed to retrieve the property
21 without being required to bring the title into the lienholder's
22 name, if the lienholder provides proof it is a lienholder and any
23 payment due the claimant for lawful charges where the claimant has
24 complied with this section. Upon the release of personal property

1 to an insurer or representative of the insurer, wrecker operators
2 shall be exempt from all liability and shall be held harmless for
3 any losses or claims of loss. In the event any law enforcement
4 agency places a hold on the property, the party wanting to inspect
5 or photograph the property shall obtain permission from the law
6 enforcement agency that placed the hold on the property before
7 inspecting or photographing.

8 L. This section shall apply to all actions or proceedings that
9 commence on or after the effective date of this act.

10 SECTION 2. This act shall become effective November 1, 2017.

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12 COMMITTEE REPORT BY: COMMITTEE ON BANKING, FINANCIAL SERVICES AND
13 PENSIONS, dated 02/08/2017 - DO PASS.

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