



AN ACT RENAMING THE OPTIONAL RETIREMENT PROGRAM; AND AMENDING SECTIONS 19-2-511, 19-3-112, 19-3-2101, 19-3-2106, 19-3-2112, 19-3-2113, 19-20-208, 19-20-302, 19-20-426, 19-20-621, 19-20-731, 19-21-101, 19-21-102, 19-21-211, AND 19-21-212, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-2-511, MCA, is amended to read:

"19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or ~~an optional~~ the university system retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or ~~optional~~ the university system retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or ~~optional~~ the university system retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or ~~optional~~ the university system retirement program as a result of incorrect reporting by an employer or other reporting agency."

Section 2. Section 19-3-112, MCA, is amended to read:

"19-3-112. Education fund established -- allocation of employer contributions -- educational program requirements. (1) (a) The board shall establish an education fund to be used to educate and inform system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational services and communication services established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of the compensation paid to all of the employer's employees who are members of the system must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational services must provide system members with impartial and balanced information about plan choices, benefits, and features. The services must be provided in a variety of formats. Plan comparisons must, to the greatest extent possible, be based upon historical rates of return on investments or benefits available in each retirement plan.

(b) If educational services are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the services are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide the educational program provided for in subsection (3) may not be the same entity contracted to provide other services for the defined contribution plan or the ~~optional~~ university system retirement program.

(3) The board shall offer an ongoing transfer educational program to provide new system members with information necessary to make informed plan choice decisions. The program must include but is not limited to information on:

- (a) determining the amount of money available to transfer to the defined contribution plan;
- (b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;
- (c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;
- (d) the rate of return from investments in the defined contribution plan that must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, assuming the same time period in each plan;
- (e) the historical rates of return for the investment alternatives available in the defined contribution plan;
- (f) determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;
- (g) use of supplemental retirement savings programs to enhance retirement income;

(h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(i) payout options available in each of the retirement plans.

(4) Ongoing educational services and communication services must be provided after members have made their initial retirement plan choice. These services must continually provide members with information about their chosen plan, alternatives within their chosen plan, and decisions necessary for retirement preparation. The services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan."

Section 3. Section 19-3-2101, MCA, is amended to read:

"19-3-2101. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means a person with a retirement account in the defined contribution plan.

~~——(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.~~

~~(3)~~(2) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

(3) "University system retirement program" means the retirement plan established by the board of regents under Title 19, chapter 21."

Section 4. Section 19-3-2106, MCA, is amended to read:

"19-3-2106. Limited contract right. The statutory provisions governing the defined contribution plan and the ~~optional~~ university system retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the ~~optional~~ university system retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective."

Section 5. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system -- amount available to transfer -- effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university ~~system's optional~~ system retirement program provided for under Title 19, chapter 21 ~~of this title~~.

(2) Except as otherwise provided in this part, an election to transfer membership to the ~~optional~~ university system retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the ~~optional~~ university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the ~~optional~~ university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the ~~optional~~ university system retirement program regardless of whether the

member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the ~~optional~~ university system retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the ~~optional~~ university system retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under Title 19, chapters 3 and 21 ~~of this title~~, but must be a member of the defined benefit plan, the defined contribution plan, or the ~~optional~~ university system retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the ~~optional~~ university system retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the ~~optional~~ university system retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the ~~optional~~ university system retirement program unless the order is modified to apply under the ~~optional~~ university system retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment

payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the ~~optional~~ university system retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the ~~optional~~ university system retirement program, the board shall transfer to the ~~optional~~ university system retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the ~~optional~~ university system retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 6. Section 19-3-2113, MCA, is amended to read:

"19-3-2113. Reinstatement of plan membership -- purchase of prior service credit in defined benefit plan. (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the ~~optional~~ university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the ~~optional~~ university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to

19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the ~~optional~~ university system retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the ~~optional~~ university system retirement program."

Section 7. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties and liability of employer. (1) Each employer shall:

(a) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;

(f) whenever applicable, inform an employee of the right to elect to participate in the ~~optional~~ university system retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation,

for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

Section 8. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the ~~optional~~ university system retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;
- (d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;
- (e) a person who is an administrative officer or a member of the instructional staff of the board of public education;
- (f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;
- (g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;
- (h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and
- (i) a person employed in a nonclerical position and who is reported on an employer's annual data

collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from

employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the ~~optional~~ university system retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the ~~optional~~ university system retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(i) is ineligible to be an active member of this system."

Section 9. Section 19-20-426, MCA, is amended to read:

"19-20-426. Creditable service for employment under ~~optional~~ university system retirement program. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's participation in the ~~optional~~ university system retirement program pursuant to 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the ~~optional~~ university system retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 10. Section 19-20-621, MCA, is amended to read:

"19-20-621. Montana university system ~~optional~~ retirement program supplemental contributions.

(1) Each employer within the university system with employees participating in the ~~optional~~ university system retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The ~~optional~~ university system retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program is:

(a) 4.04% beginning July 1, 2001, through June 30, 2007; and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033."

Section 11. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits -- reporting obligation of retired member. (1) (a) Except as [provided in 19-20-732 or as] otherwise provided

in this section, a retired member may be employed by an employer in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) [Except as provided in 19-20-732,] the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the ~~optional~~ university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the ~~optional~~ university system retirement program. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

Section 12. Section 19-21-101, MCA, is amended to read:

"19-21-101. Authority to establish ~~optional~~ university system retirement program. The board of regents may establish ~~an optional~~ a university system retirement program, as provided in this chapter, for the administrative officers and members of the instructional and scientific staff of the Montana university system. The program may be an independent plan or part of a larger plan with respect to some or all of the benefits provided. The benefits under the program must be provided through individual annuity contracts, either fixed or variable, or a combination of contracts, issued to and owned by the participants in the program. The program must comply with applicable sections of the Internal Revenue Code."

Section 13. Section 19-21-102, MCA, is amended to read:

"19-21-102. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

- (1) "Program" means the ~~optional~~ university system retirement program established pursuant to this chapter.
- (2) "Public employees' retirement system" means the retirement system established in 19-3-103.
- (3) "Teachers' retirement system" or "system" means the teachers' retirement system provided for in Title 19, chapter 20."

Section 14. Section 19-21-211, MCA, is amended to read:

"19-21-211. Payment of benefits. A retirement, death, or other benefit may not be paid by the state or the board of regents under the ~~optional~~ university system retirement program. Benefits are payable to a participant and the participant's beneficiaries only by the designated company or companies in accordance with the terms of the contracts."

Section 15. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments. Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, contracts, benefits, and contributions under the ~~optional~~ university system retirement program and the earnings on the contributions are:

- (1) except for a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c), exempt from any state, county, or municipal tax;
- (2) not subject to execution, garnishment, attachment, or other process;
- (3) not covered or assessable by an insurance guaranty association; and
- (4) unassignable except as specifically provided in the contracts."

Section 16. Instructions to code commissioner. Whenever the phrase "optional retirement program" appears in the Montana Code Annotated or in legislation enacted during the 63rd legislative session, the code commissioner shall change the phrase to "university system retirement program".

- END -

I hereby certify that the within bill,
HB 0320, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 320

INTRODUCED BY B. BENNETT, ANKNEY, AUGARE, BANGERTER, BLYTON, BOLAND, CURTIS,
DRISCOLL, ECK, FITZPATRICK, GIBSON, HERTZ, HUNTER, JENT, KEANE, LARSEN, LIESER, LYNCH,
MACDONALD, MCCHESENEY, MCCLAFFERTY, MCNALLY, MCNIVEN, D. MOORE, PEPPERS, PIERSON,
POMNICHOWSKI, PRICE, ROSENDALE, SCHREINER, SCHWADERER, B. SMITH, STEENBERG,
SWANSON, VUCKOVICH, WANZENRIED, WHITFORD, WILMER, WILSON, WOODS, T. FACEY,
K. WILLIAMS

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