

ALABAMA BOARD OF FUNERAL SERVICES  
ADMINISTRATIVE CODECHAPTER 395-X-11  
PRENEED CONTRACT FUNDING AND TRUSTS

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**395-X-11-.01      Funding Methods.**

(1) The following are available for use as the funding methods to defray the cost of future performance of preneed contracts:

- (a) A funeral or cemetery merchandise and services trust.
- (b) Life insurance or annuities sold in conjunction with the preneed contract.
- (c) A preneed seller's current revenues if the seller has in force an approved surety bond.
- (d) A preneed seller's current revenues if the seller has in force an approved letter of credit.

(2) If a preneed seller is funding preneed contracts through the use of a trust, the timing and percentage of trust deposits must be consistent for all preneed contracts sold. The Board must approve any subsequent change in the method on such terms and conditions as the Board may prescribe.

(3) Preneed contract forms must identify the funding method being used and contain provisions pertinent to that method, and not include references to or provisions relevant only to another funding method.

(4) A preneed seller must maintain a detailed and accurate record of funds collected in payment for preneed contracts and disbursements of those funds as pertinent to the funding method used.

**Author:** Charles M. Perine

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### **395-X-11-.02      Merchandise And Services Trusts.**

(1) A merchandise and services trust agreement must be approved by the Board prior to use. The trust must be irrevocable.

(2) On or after January 1, 2015, funds collected for preneed funeral merchandise and services contracts shall be trusted in a funeral merchandise and services trust. Funds collected for preneed cemetery merchandise and services contracts shall be trusted in a cemetery merchandise and services trust. Sellers that offer both preneed funeral merchandise and services contracts and cemetery merchandise and services contracts shall include caskets on the preneed funeral merchandise and services contract form and trust accordingly as provided in this Chapter.

**Author:** Charles M. Perine

**Statutory Authority:** Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

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### **395-X-11-.03      Funeral Merchandise And Services Trust - Deposits.**

(1) Any person who is paid, collects or receives funds under a preneed contract for funeral merchandise and services to be funded by trust shall timely deposit in trust an amount determined as follows:

(a) 75% of the amount collected on the purchase price for all funeral services and funeral merchandise sold, transportation and facilities rented, other than outer burial containers.

(b) 60% of the amount collected on the purchase price for outer burial containers.

(c) 110% of the wholesale cost of memorials from the amount collected on the purchase price of memorials.

(d) 100% of the amount collected on the purchase price for all cash advance items sold.

(2) Deposits in trust must occur on the following schedule:

(a) For all preneed contracts entered into between May 1, 2002 (the effective date of the Act) and December 31, 2014, the proper total amount determined by application of the provisions in paragraph (1) shall be deposited in trust within thirty (30) days after the end of the calendar month in which the preneed contract is paid in full unless, before that time, the preneed contract has been cancelled or the seller has discharged its liabilities to provide the merchandise or perform the services specified in the contract.

(b) For preneed contracts entered into on or after January 1, 2015, the seller's obligation to make trust deposits shall commence not later than thirty (30) calendar days after the end of the calendar month in which the sum of the monies collected on the preneed contract exceeds the amount that is not required to be deposited in trust. The seller shall thereafter deposit the appropriate amount in trust not later than thirty (30) days after the end of the month in which each payment on the preneed contract is collected.

(c) For preneed contracts entered into on or after January 1, 2015, at its option, and as an alternative to the schedule in subparagraph (b), a preneed seller may elect to make deposits in trust as payments are received on a preneed contract not later than thirty (30) days after the end of the calendar month in which a payment is collected. In such event, at a minimum, the amount of the deposit must equal the amount determined by application of paragraph (1). The seller must uniformly apply either the schedule in subparagraph (b) or the alternate schedule in this subparagraph to all preneed contracts sold on or after January 1, 2015.

**Author:** Charles M. Perine

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**395-X-11-.04      Funeral Merchandise And Services Trust -  
Administration, Withdrawals.**

(1) At all times, the certificate holder shall be able to determine the amount held in trust attributable to each contract holder.

(2) For all contracts entered into on or after January 1, 2015, the determination shall be based upon the fair market value of the trust at the time of determination and the proportionate share of the fair market value attributable to each contract holder.

(3) For all contracts in effect before January 1, 2015, the valuation of each contract may be calculated using any valuation method that had been approved by the Board.

(4)(a) For a withdrawal from the trust based on performance of a preneed contract, the certificate holder must present valid proof of death to the trustee of the trust. Such proof may take the following forms:

1. A copy of the published obituary; or
2. A copy of the burial transit permit; or
3. A working copy of the death certificate or coroner's report.

(b) For a withdrawal from the trust for merchandise which has been delivered and installed, or services performed, the certificate holder must present to the trustee any two of the following:

1. A written statement from an authorized representative of the cemetery authority certifying to delivery of the merchandise; or
2. A photograph of the merchandise as installed in the cemetery space; or
3. A copy of the paid-in-full invoice for purchase of the merchandise.

(5) In the event a trusted preneed contract has been cancelled or transferred to another provider, before any withdrawals from trust may be made, the certificate holder must present to the trustee a written notice signed by the purchaser stating that the contract has been cancelled or transferred upon the purchaser's request.

(6) In the case of a trust withdrawal upon fulfillment or cancellation of a preneed contract entered into on or after January 1, 2015, the amount withdrawn may not exceed the amount attributable to that preneed contract in proportion to the total amount held in trust for all preneed contracts as of the date of the withdrawal. In the event of a contract cancellation after the expiration of thirty (30) days from contract execution, default by purchaser, or transfer of the contract to another provider, the seller may only retain an amount not exceeding 20% of the contract purchase price withdrawn from the trust at the time of the cancellation, default by purchaser or transfer, and the balance in

trust exceeding such 20% must be paid to the contract purchaser or transferred to the new provider's trust.

(7) No amount representing earnings or gain on trust assets may be withdrawn from the trust except at the time of fulfillment, cancellation, transfer or default.

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**395-X-11-.05      Cemetery Merchandise And Services Trust - Deposits.**

(1) Any person who is paid, collects or receives funds under a cemetery preneed contract to be funded by trust shall deposit in trust an amount as follows:

(a) 110% of wholesale cost for all cemetery merchandise.

(b) 60% of the purchase price specified in the preneed contract for outer burial containers.

(c) 60% of the purchase price specified in the preneed contract for cemetery services.

(d) 100% of the purchase price specified for all cash advance items sold in the preneed contract.

(e) 75% of the purchase price for caskets.

(2) For all preneed contracts entered into prior to January 1, 2015, the required deposits to trust shall be made within 30 days after the end of the calendar month in which the preneed contracts is paid in full, unless, prior to that time, all liabilities of the seller under the preneed contract to deliver the specific cemetery merchandise or cemetery services, or both, or the specific cash advances, identified as properly allocated to the payment, have been satisfied, or the preneed contract is validly cancelled.

(3) For preneed contracts entered into on or after January 1, 2015, the seller's obligation to make trust deposits shall commence not later than thirty (30) calendar days after the end of the calendar month in which the sum of the monies collected on the preneed contract exceeds the amount that is not required to be deposited in trust. The seller shall thereafter deposit the appropriate amount in trust not later than thirty(30) days after the end of the month in which each payment on the preneed contract is collected.

(4) At the time of fulfillment of the preneed contract, the seller may withdraw the principal amount in trust, less any loss of the value of the principal, attributable to items or services fulfilled, delivered, or performed on the contract.

(5) In order to withdraw amounts representing earnings or gain attributable to trust assets or amounts otherwise exceeding the amount needed to perform preneed contracts:

(a) The fair market value of the trust representing all contracts that are paid-in-full must exceed 110 percent of the total sum of the following:

1. 110% of the current wholesale cost of all cemetery merchandise.
2. 60% of the current retail price of all cemetery services.
3. 60% of the current retail price of all outer burial containers.
4. 75% of the current retail price of all caskets.
5. 100% of the current retail price of all cash advances.

(b) The fair market value of the trust representing all contracts that are not paid-in-full must exceed 25% of the total sum of the following:

1. 110% of the current wholesale cost of the liability to deliver all cemetery merchandise (including caskets and outer burial containers).
2. 60% of the current retail price of all cemetery services.
3. 100% of the current retail price of all cash advances.

(6) An analysis using the formula in paragraph (5) shall be made annually by the seller, certified under oath by the seller, and provided to the trustee. If the certified analysis evidences an excess in trust beyond the amount calculated under paragraph (5), the certificate holder may withdraw and retain all or part of that excess. If such analysis evidences that the fair market value of the trust is less than 100% of the aggregate calculated amount, within twelve(12) months thereafter, the certificate holder shall, from its own funds, contribute the amount necessary to restore the trust fund to an amount not less than 100% of the aggregate amount calculated.

(7) If the amount paid by the purchaser under a preneed contract for cemetery merchandise has been previously been deposited in

trust, the seller may withdraw the principal amount, less any loss of the value of the principal, at the time the cemetery merchandise is delivered or installed or the merchandise is placed in storage with a responsible third party bonded and insured for the wholesale value. Such merchandise can only be comprised of materials designed to withstand prolonged, protected storage without deterioration, and cannot be caskets or alternative containers. If the merchandise is stored, a record specifically identifying each item, the specific preneed contract number, the location of the site, and the identity and address of the bonding and insuring parties, must be attached to the purchaser's record.

(8) Any withdrawal from the trust must be made under oath by an officer of the certificate holder and attested before a notary public. The sworn statement shall certify that the contract has been cancelled, partially fulfilled by delivery or installation, or completely fulfilled.

**Author:** Charles M. Perine

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### **395-X-11-.06      Use Of Surety Bond In Lieu Of Trusting.**

(1) A surety bond may be used in lieu of establishing and maintaining a merchandise and services trust. The surety bond, its form, and amount must be approved by the Board prior to use and written through an insurance company authorized to transact surety insurance in Alabama.

(2) The amount of the initial surety bond must be not less than the aggregate value of outstanding liabilities on undelivered preneed contracts of the certificate holder as of the end its last fiscal year. For purposes of determining the amount of the surety bond, "outstanding liabilities" means the original retail amount of services and cash advances and the actual cost to the certificate holder to provide the undelivered merchandise sold on each contract written after April 30, 2002. The surety bond shall be in an amount sufficient to cover the outstanding liability at the time each contract is executed.

(3) After initial approval, the amount of the bond shall be increased or decreased as necessary to correlate with changes in the outstanding liabilities for the previous calendar quarter and the projected liability for the immediately following quarter.

**Author:** Charles M. Perine

**Statutory Authority:** Code of Ala. 1975, §§34-13-26, 34-13-27, 34-13-170 to -277.

**History: New Rule:** Published March 29, 2024; effective May 13, 2024.

**395-X-11-.07      Use Of Letter Of Credit In Lieu Of Trusting.**

(1) A letter of credit may be used in lieu of establishing and maintaining a merchandise and services trust. The letter of credit, its form, and amount must be approved by the Board prior to use.

(2) The letter of credit must be "evergreen," meaning it will not expire without an affirmative action by the issuer of the letter of credit. The amount of the letter of credit shall be determined in the same manner as indicated in Rule 395-X-11-.06 for the amount of surety bonds.

**Author:** Charles M. Perine

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**History: New Rule:** Published March 29, 2024; effective May 13, 2024.

**395-X-11-.08      Pre-Act Trusts.**

(1) A preneed merchandise and services trust established for funds collected on preneed contracts entered into prior to May 1, 2002, may not be merged with a trust established for preneed contracts entered into on and after May 1, 2002, without the express permission of the Board.

(2) To approve the merger of the trusts, the Board must be satisfied that the minimum amounts required to be trusted under the law have been trusted on the contracts entered into prior to the law.

**Author:** Charles M. Perine

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**395-X-11-.09      Endowment Care Fund.**

(1) Each endowment care cemetery must establish and maintain an irrevocable trust known as an endowment care fund irrespective of whether the cemetery authority holds a certificate of authority to sell preneed contracts. Each cemetery authority that operated an endowment care cemetery and sold interment rights on or after the effective date of the Act (May 1, 2002) and had an existing fund or trust for endowment care shall transfer the assets of such fund



or trust into an endowment care fund to be administered according to the Act and this Chapter.

(2) The endowment care fund shall be placed with and held by a bank, trust company, savings and loan association, or other financial institution authorized to provide trust services under the provisions of Alabama Code or under the applicable laws of the United States or any other state, or a board of trustees. The endowment care fund trust agreement must be filed with and approved by the Board.

(3) If used, a board of trustees shall consist of at least three members, who shall each reside in Alabama and at least one of whom is engaged in outside cemetery management. Each such member shall be bonded to honestly perform the duties of trustee under the trust agreement as approved by the Board. Effective July 1, 2014, a person serving on a board of trustees for cemetery authority may not also serve as a trustee of an endowment care fund for the cemetery authority.

(4) A board of trustees in existence as of July 1, 2014, may thereafter continue to serve as the trustee of an endowment care fund if, unless exempted by the Board as provided in paragraph (5), each member of the board of trustees shall furnish a bond in the amount of \$100,000 or the amount in each endowment care fund for which the board acts as trustee as of December 31, 2014, whichever amount is greater. The amount of the bonds shall be increased on January 1 of each succeeding year to equal the amount in each endowment care fund as of the immediately preceding December 31. The bond, its form, and amount must be approved by the Board prior to use and written through an insurance company authorized to transact surety insurance in Alabama.

(5) The Board shall exempt a board of trustees from a bond requirement in paragraph (4) if the board of trustees provides to the Board an annual audit that satisfies all the following:

(a) The report is prepared by a certified public accountant authorized to practice in Alabama.

(b) The report evidences that the review made subject of the report by the accountant encompasses each endowment care fund for which the board acts as trustee.

(c) The report notes relating to the endowment care fund or funds are in a form that is reasonably acceptable to the Board.

(d) The report does not evidence any material violation of or noncompliance relating to an endowment care fund.

(6) An endowment care fund report in a form approved by the Board shall be filed by the trustee with the Board within ninety (90)

days after the close of each calendar year. Such report shall include a complete disclosure of all activity concerning the fund since the previous report and a statement detailing fund investments.

(7) The Board has the authority to examine the records or facilities of any cemetery authority operating an endowment care cemetery as often as the Board may require.

(8) Net income from an endowment care fund, to the extent that it is distributed from the fund, shall be used exclusively to pay for costs of the endowment care cemetery. "Net income" does not include realized or unrealized capital gains or losses. All realized capital gains or losses should be recorded to the fund corpus. For purposes of this subpart, corpus is the sum of the deposits made by the cemetery authority into an endowment care fund and all realized capital gains or losses. Capital gains taxes, if any, may be paid from the corpus. Unrealized capital gains and losses, if any, shall be recorded as an adjustment to the fair market value of the endowment care fund.

(9) Except as permitted under paragraph (10), a deposit to an endowment care fund cannot be withdrawn from the endowment care fund upon later cancellation of the transaction or in the event of a later discovered calculation error or other error resulting in an excess deposit over that required or for any other reason outside the scope of Code of Ala. 1975, §34-13-270(b).

(10)(a) A cemetery authority may recognize and apply a "credit" against future required deposits to the endowment care fund in the following instances:

1. When the cemetery authority permits a purchaser to cancel a transaction giving rise to a deposit in the endowment care fund and the cemetery authority has refunded one hundred (100) percent of the transaction purchase price (to include any amount allocated to endowment care) to the purchaser; or

2. As a result of a calculation error or other error, the amount contributed to the endowment care fund for a transaction exceeds what is required under Code of Ala. 1975, §34-13-269(a) (2014) or a greater amount, if any, as may be required by the transaction.

(b) In these instances, the cemetery authority may decrease the amount of a subsequent deposit into the endowment care fund by the amount of the contribution actually made for a cancelled transaction or the excess amount deposited in error. This type of adjustment should not be reflected as a "withdrawal" from the endowment care fund in the cemetery authority's records.

(c) Whether to recognize a "credit" in these instances is at the election of the cemetery authority. The "credit," however, must be recognized not later than four (4) calendar months after the date of the event (cancellation or discovery of an error) giving rise to the "credit."

(d) Each cemetery authority using this "credit" method must maintain detailed records that identify the specific contracts involved in any adjustment by "credit" to endowment care fund deposits and, upon examination, or otherwise upon request, must be able to furnish the Board's examiners or representatives with a summary of all endowment care fund adjustments during the period covered by the examination or request.

(11) For preneed contracts entered into on or after January 1, 2015, a cemetery authority providing a discounted, free or complimentary interment right in any grave space, crypt or niche shall timely make an endowment care fund deposit for such discounted, free or complimentary interment right. The amount of such deposit shall be determined by the sale price of interment rights in grave spaces, crypts or niches as of the date of the sale and applying the proper percentage specified in Code of Ala. 1975, §34-13-269(a).

(12) On or after October 1, 2023 for preneed contracts in which a cemetery authority provides a discounted interment right in any grave space, crypt, or niche, the cemetery authority shall timely make a deposit to the endowment care fund for such discounted interment right. The amount of such deposit shall be determined by the net sale price of interment rights in grave spaces, crypts or niches as of the date of the sale and applying the proper percentage specified in Code of Ala. 1975, §34-13-269(a).

(13) On or after October 1, 2023, if a cemetery authority donates or gives a free space, mausoleum, or niche, a minimum of fifty dollars (\$50) shall be paid to the endowment care fund.

**Author:** Charles M. Perine

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### 395-X-11-.10

#### **Using Life Insurance Or Annuities To Fund A Preneed Contract For Funeral Or Cemetery Merchandise And Services.**

(1) The offering and sale of life insurance or annuities intended to fund future performance of funeral or cemetery preneed contracts must comply with all applicable sections of the Alabama

insurance code [Ala. Code Tit. 27] and applicable insurance regulations.

(2) Life insurance or annuities may only be offered through insurance companies authorized by the Board to engage in the business of life insurance in Alabama. All policy and related forms must have been reviewed and approved by the Board prior to use.

(3) Except as provided in paragraph (4), any registered preneed sales agent or other employee of a preneed provider who engages in the solicitation, negotiation, or sale of an individual life insurance policy or annuity contract must be actively licensed as an insurance producer qualified in the life line and as to the type of annuity offered, and must be properly appointed by the insurance company whose product is being offered. A business entity certificate holder may hold a business entity producer license, but at least one employee of that entity must hold an individual producer license and be designated by the entity as the person responsible for the entity's compliance with insurance laws. Appropriate licensing and insurer appointment are required in order to receive payment of commissions for the sale of life insurance or annuities.

(4) A registered preneed sale agent or other employee of a preneed provider need not hold an insurance producer license if:

(a) The life insurance product being offered is group life insurance;

(b) The agent's or employee's insurance-related activity is strictly limited to obtaining information needed to enroll a preneed contract beneficiary in a group insurance plan or to issue that person a certificate of insurance under a group insurance plan; and

(c) The agent or employee is not paid a commission for the activity.

(5) Life insurance sold to fund a preneed contract must cover not less than the initial retail price of the preneed contract. This does not prohibit the use of life insurance products which have graded or limited death benefit features. Annuities sold to fund a preneed contract must ultimately cover not less than the initial retail price of the preneed contract. Preneed contracts funded by a combination of annuity and life insurance must ultimately cover not less than the initial retail price of the preneed contract. The life insurance or annuity contract written or assigned to fund the preneed contract must be written or assigned at the time the preneed contract is executed.

(6) The preneed contract must disclose that individual or group life insurance or an annuity is the preneed contract funding

mechanism. The preneed contract shall not state, represent, or tend to cause confusion that the contract is trust-funded or that the preneed provider will be placing any portion of the contract's purchase price in a trust.

(7) The requirements of Alabama Insurance Regulation, Chapter 482-1-078, apply to the sale of individual or group life insurance or an annuity incident to sale of a preneed contract. Premium payments for life insurance or an annuity consideration must be made to the order of the insurance company, not the preneed provider. If payment is tendered to the preneed provider authorized by the insurance company to receive payments, the preneed provider must furnish a receipt complying with Rule 482-1-078-.05. The preneed provider shall immediately remit funds collected as premium payments to the insurance company.

**Author:** Charles M. Perine

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### 395-X-11-.11

#### Investment In Life Insurance And Annuities By Preneed Funeral Merchandise And Services Trusts.

(1) In order for a funeral merchandise and service trust to invest in life insurance and annuities as provided in Code of Ala. 1975, §34-13-232(d), the trust agreement must include language that permits such investment by the trustee. A preneed contract for which a trust invests in insurance policies or annuities as allowed by Code of Ala. 1975, §34-13-232(d) is a trust-funded contract for purposes of the Act and this Chapter.

(2) A trustee of a funeral merchandise and services trust has a limited insurable interest in the life of a preneed contract purchaser or a preneed contract beneficiary. The extent of the insurable interest of the trustee is limited to the lesser of \$20,000 or 100% of the purchase price of the preneed contract.

(3) If so authorized by the trust agreement, the trustee of a funeral merchandise and services trust may invest any portion or all of the funds deposited in trust for preneed contracts in life insurance contract or annuities issued on the lives of the preneed contract purchasers or preneed contract beneficiaries if the following requirements are met:

(a) The insurer is properly licensed by the Board and by the insurer's domiciliary jurisdiction.

(b) Prior to the investment, the insured or annuitant consents, in writing, to the investment in a life insurance contract or annuity on the person's life.

(4) Written consent must be made by a document separate from the preneed contract. Preneed providers, trustees, and insurance companies may not rely or act on "consent" contained within a preneed contract signed by the contract purchaser or beneficiary. The form of consent must substantially conform to the form developed by the Board and published on the Board's website. Any other type of consent form used must be submitted for review and approval by the Board prior to use.

(5) The insurance company has the responsibility for complying with consent requirements for life insurance policies or annuities for a preneed trust. A preneed provider, through its preneed sales agents, may present a consent form to a prospective preneed contract purchaser as part of the preneed contract sales process. The provider and its employees or agents shall not misrepresent the nature or terms of the consent form or the nature of the transaction. In connection with obtaining execution of the consent form, preneed sales agents or other employees or agents of the preneed provider shall not engage in activities constituting the sale, solicitation or negotiation of insurance for which licensing as an insurance producer is required. Consumer inquiries about the nature or effect of the consent, if not otherwise answered on the face of the consent form, must be referred to the insurance company.

(6) Consent must be obtained from the preneed contract beneficiary to the extent that a preneed contract purchaser identified in a preneed contract is not also identified as the beneficiary of that contract. The contract purchaser, if different, may not give consent on the beneficiary's behalf except in the specific instances provided for in Code of Ala. 1975, §§27-14-6(a)(1), - (2), or -(3) (2007). The person from whom consent is obtained must be of competent legal capacity to contract.

(7) The preneed trust or trustee electing to invest in life insurance policies or annuities as allowed will be shown as the owner and beneficiary of the policies or annuities.

(8) Neither the insurance company nor the funeral merchandise and services trustee may pay a certificate holder or the holder's employees or agents a commission or any other form of compensation relating, directly or indirectly, to life insurance or annuities sold to a funeral merchandise and services trust as a trust investment.

(9) An insurance company may not pay a funeral merchandise and services trust or the trustee of such a trust a commission, rebate, or financial inducement of any kind directly or indirectly relating to life insurance or annuities sold to the trust as a trust investment.

(10) Any trustee electing to use the investment mechanism allowed and any insurance company electing to sell life insurance or

annuities to trusts will furnish to the Board and the trust beneficiary for transmittal to the Board a complete and accurate accounting of the trust's investments in life insurance policies and annuities if requested by the Board as part of the Board's examination or its regulatory responsibilities. Each preneed provider that is beneficiary of a funeral merchandise and services trust which invests in life insurance or annuities shall require the trustee to maintain a complete and accurate accounting of the trust's investments in life insurance policies and annuities and to furnish the information to the Board upon request.

**Author:** Charles M. Perine

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