



April 6, 1999

**ENGROSSED
HOUSE BILL No. 1653**

DIGEST OF HB 1653 (Updated March 30, 1999 11:31 am - DI 75)

Citations Affected: IC 32-7; IC 33-4; IC 33-5; IC 33-10.5; IC 33-11.6.

Synopsis: Residential landlord and tenant law. Requires a landlord to give a tenant at least 30 days written notice before modifying the rental agreement unless a written rental agreement provides otherwise. States circumstances under which a landlord may enter a tenant's dwelling unit. Provides that a landlord may not deny a tenant access to the tenant's personal property, except under an existing statute. Provides that a landlord may not interfere with a tenant's access to or possession
(Continued next page)

Effective: July 1, 1999.

**Hasler, Scholer, Klinker, Linder,
Day, Dvorak**

(SENATE SPONSORS — BRAY, LANANE)

January 21, 1999, read first time and referred to Committee on Judiciary.
February 24, 1999, amended, reported — Do Pass.
March 3, 1999, read second time, ordered engrossed. Engrossed.
March 8, 1999, read third time, passed. Yeas 51, nays 38.

SENATE ACTION

March 11, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
April 5, 1999, amended, reported favorably — Do Pass.

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of the tenant's dwelling unit, except under a judicial order. Provides that a tenant may not interrupt, reduce, shut off, or cause termination of utility services to the tenant's dwelling unit if the action will result in serious damage to the rental unit. Establishes an emergency possessory action in small claims courts for a landlord or a tenant to obtain a hearing within three business days if the tenant is committing waste to the rental unit or if the landlord has violated the tenant's right of access to or possession of the dwelling unit.

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April 6, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1653

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-7-8 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:
4 **Chapter 8. Rental Agreements; Rights of Access to a Dwelling
5 Unit and Tenant's Property**
6 **Sec. 1. (a) This chapter applies only to a rental agreement
7 entered into or renewed after June 30, 1999.**
8 **(b) This chapter applies to a landlord or tenant only if the rental
9 agreement was entered into or renewed after June 30, 1999.**
10 **Sec. 2. (a) For purposes of this section, "tenant" includes a
11 former tenant.**
12 **(b) A waiver of this chapter by a landlord or tenant, by contract
13 or otherwise, is void.**
14 **Sec. 3. The definitions in IC 32-7-5 apply throughout this
15 chapter.**
16 **Sec. 4. (a) As used in this chapter, "dwelling unit" means a**

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1 structure or part of a structure that is used as a home, residence,
2 or sleeping unit.

3 (b) The term includes an apartment unit, a boarding house unit,
4 a rooming house unit, a manufactured home (as defined in
5 IC 22-12-1-16) or mobile structure (as defined in IC 22-12-1-17)
6 used as a dwelling unit and the manufactured home's or mobile
7 structure's space, and a single or two (2) family dwelling.

8 Sec. 5. Unless otherwise provided by a written rental agreement
9 between a landlord and tenant, a landlord shall give the tenant at
10 least thirty (30) days written notice before modifying the rental
11 agreement.

12 Sec. 6. Except as provided in IC 16-41-27-29, IC 32-7-5, or
13 IC 32-7-6, a landlord may not:

- 14 (1) take possession of;
- 15 (2) remove from a tenant's dwelling unit;
- 16 (3) deny a tenant access to; or
- 17 (4) dispose of;

18 a tenant's personal property in order to enforce an obligation of
19 the tenant to the landlord under a rental agreement. The landlord
20 and tenant may agree in a writing separate from the rental
21 agreement that the landlord may hold property voluntarily
22 tendered by the tenant as security in exchange for forbearance
23 from an action to evict.

24 Sec. 7. (a) This section does not apply if the dwelling unit has
25 been abandoned.

26 (b) For purposes of this section, a dwelling unit is considered
27 abandoned if:

- 28 (1) the tenants have failed to pay, or have failed to offer to
29 pay, rent due under the rental agreement; and
- 30 (2) the circumstances are such that a reasonable person would
31 conclude that the tenants have surrendered possession of the
32 dwelling unit.

33 An oral or written rental agreement may not define abandonment
34 differently than is provided by this subsection.

35 (c) Except as authorized by judicial order, a landlord may not
36 deny or interfere with a tenant's access to or possession of the
37 tenant's dwelling unit by commission of any act, including any of
38 the following:

- 39 (1) Changing the locks or adding a device to exclude the
40 tenant from the dwelling unit.
- 41 (2) Removing the doors, windows, fixtures, or appliances from
42 the dwelling unit.



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1 (3) Interrupting, reducing, shutting off, or causing
 2 termination of electricity, gas, water, or other essential
 3 services to the tenant unless the interruption, shutting off, or
 4 termination results from an emergency, good faith repairs, or
 5 necessary construction. This subdivision does not require a
 6 landlord to pay for services described in this subdivision if the
 7 landlord has not agreed, by a written rental agreement, to do
 8 so.

9 (d) A tenant may not interrupt, reduce, shut off, or cause
 10 termination of electricity, gas, water, or other essential services to
 11 the dwelling unit if the interruption, reduction, shutting off, or
 12 termination of the service will result in serious damage to the
 13 rental unit.

14 SECTION 2. IC 32-7-9 IS ADDED TO THE INDIANA CODE AS
 15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 1999]:

17 **Chapter 9. Emergency Possessory Orders**

18 **Sec. 1. The definitions in IC 32-7-5 and IC 32-7-8 apply**
 19 **throughout this chapter.**

20 **Sec. 2. The small claims docket of a court has jurisdiction to**
 21 **grant an emergency possessory order under this section.**

22 **Sec. 3. The following may file an action for an emergency**
 23 **possessory order under this chapter:**

24 (1) A tenant, if the landlord has violated IC 32-7-8-7.

25 (2) A landlord, if the tenant has committed, or threatens to
 26 commit, waste to the rental unit.

27 **Sec. 4. A claim for an order under this chapter must satisfy the**
 28 **following:**

29 (1) Include an allegation specifying both of the following:

30 (A) The violation, act, or omission caused or threatened by
 31 a landlord or tenant.

32 (B) The nature of the specific immediate and serious
 33 injury, loss, or damage that the landlord or tenant has
 34 suffered or will suffer if the violation, act, or omission is
 35 not enjoined.

36 (2) Be sworn to by the claimant.

37 **Sec. 5. If a tenant or a landlord petitions the court to issue an**
 38 **order under this chapter, the court shall immediately do the**
 39 **following:**

40 (1) Review the petition.

41 (2) Schedule an emergency hearing for not later than three (3)
 42 business days after the petition is filed.



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1 **Sec. 6. (a) At the emergency hearing, if the court finds:**
2 (1) probable cause to believe that the landlord has violated or
3 threatened to violate IC 32-7-8-7; and
4 (2) that the tenant will suffer immediate and serious injury,
5 loss, or damage;
6 the court shall issue an emergency order under subsection (b).
7 (b) If the court makes a finding under subsection (a), the court
8 shall order the landlord to do either or both of the following:
9 (1) Return possession of the dwelling unit to the tenant if the
10 tenant has been deprived of possession of the dwelling unit.
11 (2) Refrain from violating IC 32-7-8-7.
12 (c) The court may make other orders that the court considers
13 just under the circumstances, including setting a subsequent
14 hearing at the request of a party to adjudicate related claims
15 between the parties.
16 **Sec. 7. (a) At the emergency hearing, if the court finds:**
17 (1) probable cause to believe that the tenant has committed,
18 or threatens to commit, waste to the rental unit; and
19 (2) that the landlord has suffered or will suffer immediate and
20 serious injury, loss, or damage;
21 the court shall issue an order under subsection (b).
22 (b) If the court makes a finding under subsection (a), the court
23 shall order the tenant to do either or both of the following:
24 (1) Return possession of the dwelling unit to the landlord.
25 (2) Refrain from committing waste to the dwelling unit.
26 (c) The court may make other orders that the court considers
27 just under the circumstances, including setting a subsequent
28 hearing at the request of a party to adjudicate related claims
29 between the parties.
30 **Sec. 8. (a) When a petition is filed under this chapter, the clerk**
31 **shall issue to the respondent a summons to appear at a hearing**
32 **that:**
33 (1) gives notice of the date, time, and place of the hearing; and
34 (2) informs the respondent that the respondent must appear
35 before the court to answer the petition.
36 (b) The clerk shall serve the respondent with the summons to
37 appear in accordance with Rule 4.1 of the Rules of Trial
38 Procedure.
39 (c) The court shall not grant a continuance of the emergency
40 hearing except upon clear and convincing evidence that manifest
41 injustice would result if a continuance were not granted.
42 **Sec. 9. If the court sets a subsequent hearing under section 6(c)**

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1 or 7(c) of this chapter, the court may do the following at the
2 subsequent hearing:

- 3 (1) Determine damages.
4 (2) Order return of a tenant's withheld property.
5 (3) Make other orders the court considers just under the
6 circumstances.

7 **Sec. 10. The adjudication of an emergency possessory claim**
8 **under section 6(b) or 7(b) of this chapter does not bar a subsequent**
9 **claim a party may have against the other party arising out of the**
10 **landlord and tenant relationship unless that claim has been**
11 **adjudicated under section 9 of this chapter.**

12 SECTION 3. IC 33-4-3-7 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 1999]: Sec. 7. The small claims docket has
14 jurisdiction over the following:

- 15 (1) Civil actions in which the amount sought or value of the
16 property sought to be recovered is not more than three thousand
17 dollars (\$3,000). The plaintiff in a statement of claim or the
18 defendant in a counterclaim may waive the excess of any claim
19 that exceeds three thousand dollars (\$3,000) in order to bring it
20 within the jurisdiction of the small claims docket.
21 (2) Possessory actions between landlord and tenant in which the
22 rent due at the time the action is filed does not exceed three
23 thousand dollars (\$3,000).
24 (3) **Emergency possessory actions between a landlord and**
25 **tenant under IC 32-7-9.**

26 SECTION 4. IC 33-5-2-4 IS AMENDED TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 1999]: Sec. 4. The small claims docket has
28 jurisdiction over the following:

- 29 (1) Civil actions in which the amount sought or value of the
30 property sought to be recovered is not more than three thousand
31 dollars (\$3,000). The plaintiff in a statement of claim or the
32 defendant in a counterclaim may waive the excess of any claim
33 that exceeds three thousand dollars (\$3,000) in order to bring it
34 within the jurisdiction of the small claims docket.
35 (2) Possessory actions between landlord and tenant in which the
36 rent due at the time the action is filed does not exceed three
37 thousand dollars (\$3,000).
38 (3) **Emergency possessory actions between a landlord and**
39 **tenant under IC 32-7-9.**

40 SECTION 5. IC 33-5-19.3-11 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The court has
42 a standard small claims and misdemeanor division.



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1 (b) Notwithstanding IC 33-5-2-4, the small claims docket has
2 jurisdiction over the following:

3 (1) Civil actions in which the amount sought or value of the
4 property sought to be recovered is not more than six thousand
5 dollars (\$6,000). The plaintiff in a statement of claim or the
6 defendant in a counterclaim may waive the excess of any claim
7 that exceeds six thousand dollars (\$6,000) in order to bring the
8 claim within the jurisdiction of the small claims docket.

9 (2) Possessory actions between landlord and tenant in which the
10 rent due at the time the action is filed does not exceed six
11 thousand dollars (\$6,000).

12 **(3) Emergency possessory actions between a landlord and**
13 **tenant under IC 32-7-9.**

14 SECTION 6. IC 33-10.5-7-1 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Each judge of the
16 county court shall maintain the following dockets:

17 (1) An offenses and violations docket.

18 (2) A small claims docket for **the following:**

19 (A) All cases where the amount sought or value of the property
20 sought to be recovered is three thousand dollars (\$3,000) or
21 less; the plaintiff in a statement of claim or the defendant in a
22 counterclaim may waive the excess of his claim over three
23 thousand dollars (\$3,000) to bring it within the jurisdiction of
24 the small claims docket. ~~and~~

25 (B) All possessory actions between landlord and tenant in
26 which the rent due at the time the action is filed does not
27 exceed three thousand dollars (\$3,000).

28 **(C) Emergency possessory actions between a landlord and**
29 **tenant under IC 32-7-9.**

30 (3) A plenary docket for all other civil cases.

31 SECTION 7. IC 33-11.6-4-3.5 IS ADDED TO THE INDIANA
32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. The court has original and**
34 **concurrent jurisdiction with the circuit and superior court in**
35 **emergency possessory actions between a landlord and tenant under**
36 **IC 32-7-9.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1653, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 11, after "in" insert "**IC 16-41-27-29, IC 32-7-5, or**".

Page 2, delete lines 20 through 42, begin a new paragraph and insert:

"(b) For purposes of this section, a dwelling unit is considered abandoned if:

(1) the tenants have failed to pay, or have failed to offer to pay, rent due under the rental agreement; and

(2) the circumstances are such that a reasonable person would conclude that the tenants:

(A) have voluntarily vacated the dwelling unit;

(B) have relinquished possession of the dwelling unit; and

(C) do not intend to return to the dwelling unit.

An oral or written rental agreement may not define abandonment differently than is provided by this subsection."

Page 3, delete lines 1 through 7.

and when so amended that said bill do pass.

(Reference is to HB 1653 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 9, nays 4.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1653, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 1, delete "32-7-7" and insert "32-7-8".

Page 1, line 4, delete "7." and insert "8."

Page 2, line 18, after "agreement." insert "**The landlord and tenant may agree in a writing separate from the rental agreement that the landlord may hold property voluntarily tendered by the tenant as security in exchange for forbearance from an action to evict.**".

Page 2, line 26, delete ":" and insert "**have surrendered possession of the dwelling unit.**".

Page 2, delete lines 27 through 29.

Page 2, line 33, delete "quiet enjoyment" and insert "**possession**".

Page 2, line 40, after "Interrupting," insert "**reducing,**".

Page 3, line 2, after "construction." insert "**This subdivision does not require a landlord to pay for services described in this subdivision if the landlord has not agreed, by a written rental agreement, to do so.**

(d) A tenant may not interrupt, reduce, shut off, or cause termination of electricity, gas, water, or other essential services to the dwelling unit if the interruption, reduction, shutting off, or termination of the service will result in serious damage to the rental unit.

SECTION 2. IC 32-7-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 9. Emergency Possessory Orders

Sec. 1. The definitions in IC 32-7-5 and IC 32-7-8 apply throughout this chapter.

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this section.

Sec. 3. The following may file an action for an emergency possessory order under this chapter:

- (1) A tenant, if the landlord has violated IC 32-7-8-7.**
- (2) A landlord, if the tenant has committed, or threatens to commit, waste to the rental unit.**

Sec. 4. A claim for an order under this chapter must satisfy the following:

- (1) Include an allegation specifying both of the following:**

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(A) The violation, act, or omission caused or threatened by a landlord or tenant.

(B) The nature of the specific immediate and serious injury, loss, or damage that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined.

(2) Be sworn to by the claimant.

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

(1) Review the petition.

(2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

Sec. 6. (a) At the emergency hearing, if the court finds:

(1) probable cause to believe that the landlord has violated or threatened to violate IC 32-7-8-7; and

(2) that the tenant will suffer immediate and serious injury, loss, or damage;

the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

(1) Return possession of the dwelling unit to the tenant if the tenant has been deprived of possession of the dwelling unit.

(2) Refrain from violating IC 32-7-8-7.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

Sec. 7. (a) At the emergency hearing, if the court finds:

(1) probable cause to believe that the tenant has committed, or threatens to commit, waste to the rental unit; and

(2) that the landlord has suffered or will suffer immediate and serious injury, loss, or damage;

the court shall issue an order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the tenant to do either or both of the following:

(1) Return possession of the dwelling unit to the landlord.

(2) Refrain from committing waste to the dwelling unit.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.



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Sec. 8. (a) When a petition is filed under this chapter, the clerk shall issue to the respondent a summons to appear at a hearing that:

- (1) gives notice of the date, time, and place of the hearing; and**
- (2) informs the respondent that the respondent must appear before the court to answer the petition.**

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The court shall not grant a continuance of the emergency hearing except upon clear and convincing evidence that manifest injustice would result if a continuance were not granted.

Sec. 9. If the court sets a subsequent hearing under section 6(c) or 7(c) of this chapter, the court may do the following at the subsequent hearing:

- (1) Determine damages.**
- (2) Order return of a tenant's withheld property.**
- (3) Make other orders the court considers just under the circumstances.**

Sec. 10. The adjudication of an emergency possessory claim under section 6(b) or 7(b) of this chapter does not bar a subsequent claim a party may have against the other party arising out of the landlord and tenant relationship unless that claim has been adjudicated under section 9 of this chapter.

SECTION 3. IC 33-4-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. The small claims docket has jurisdiction over the following:

- (1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.**
- (2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).**
- (3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.**

SECTION 4. IC 33-5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. The small claims docket has jurisdiction over the following:

- (1) Civil actions in which the amount sought or value of the**

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property sought to be recovered is not more than three thousand dollars (\$3,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds three thousand dollars (\$3,000) in order to bring it within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

SECTION 5. IC 33-5-19.3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The court has a standard small claims and misdemeanor division.

(b) Notwithstanding IC 33-5-2-4, the small claims docket has jurisdiction over the following:

(1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars (\$6,000) in order to bring the claim within the jurisdiction of the small claims docket.

(2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).

(3) Emergency possessory actions between a landlord and tenant under IC 32-7-9.

SECTION 6. IC 33-10.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Each judge of the county court shall maintain the following dockets:

(1) An offenses and violations docket.

(2) A small claims docket for **the following:**

(A) All cases where the amount sought or value of the property sought to be recovered is three thousand dollars (\$3,000) or less; the plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of his claim over three thousand dollars (\$3,000) to bring it within the jurisdiction of the small claims docket. ~~and~~

(B) All possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed three thousand dollars (\$3,000).

(C) Emergency possessory actions between a landlord and tenant under IC 32-7-9.



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(3) A plenary docket for all other civil cases.

SECTION 7. IC 33-11.6-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.5. The court has original and concurrent jurisdiction with the circuit and superior court in emergency possessory actions between a landlord and tenant under IC 32-7-9."**

and when so amended that said bill do pass.

(Reference is to HB 1653 as printed February 25, 1999.)

MILLS, Chairperson

Committee Vote: Yeas 7, Nays 1.

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