The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
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UNIFORM ATHLETE AGENTS ACT

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UNIFORM ATHLETE AGENTS ACT

PREFATORY NOTE

A high percentage of athlete agents provide valuable services which are greatly needed by student-athletes who are qualified to seek professional sports services contracts. The services usually include negotiations with professional sports organizations and securing endorsement contracts. The services may also include financial and investment management, tax planning, legal counseling and a variety of other career management services.

Unfortunately, there are other athlete agents, or would be agents, who are motivated solely by a desire to obtain a "cut" of a student-athlete's future income. These unscrupulous individuals are willing to use any means to obtain an agency contract with any student-athlete who has any possibility of a professional career. The multi-million dollar contracts now being offered to many student-athletes have provided additional impetus to this minority.

The damage done by improper and illegal enticements to student-athletes is far greater than the casual observer might believe. The student-athlete who enters into an agency contract loses any remaining eligibility and may diminish his or her value in the professional sports market. Additionally, in some States, the student-athlete may be subject to civil and criminal sanctions. The educational institution (usually a college or university) attended by the student-athlete may be subject to severe financial penalties. Penalties can result either from loss of eligibility to participate in post-season events or from the effect of programs weakened by sanctions on ticket sales. Perhaps even more damaging is the impact of a "scandal" on the integrity and credibility of educational institutions and on intercollegiate sports in general.

Since 1981 at least 28 States have enacted statutes regulating athlete agents. Those statutes are not uniform and do not provide for reciprocal enforcement. Several major universities and the NCAA have asked the Conference to draft this Uniform Act and have pledged their support in obtaining enactments. The NCAA agreed to finance the drafting project. Although treading on regulatory ground the Conference has usually avoided the Conference, with some reluctance, agreed to draft a Uniform Act.
UNIFORM ATHLETE AGENTS ACT

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Athlete Agents Act.

Reporter's Notes
The use of term "athlete agent" reflects the current usage in many States that have existing law on the same subject; e.g. Alabama [Section 8-26-1, et. seq., Code of Alabama 1975]; Colorado [Section 23-16-101, et. seq., Colorado Revised Statutes Annotated]; Iowa [Section 9A.1 et. seq., Iowa Code Annotated]; Louisiana [Louisiana Statutes Annotated, 4:424, Section 421 et. seq.]; Mississippi [Section 73-41-1, et. seq.]; Missouri [Section 436.200, et. seq., Missouri Code]; North Carolina [Chapter 78C, North Carolina Code]; Oklahoma [Oklahoma Code Annotated, Section 70-821.1, et. seq.]; South Carolina [South Carolina Code Annotated, Section 59-102-10, et. seq.]; Texas [Title 132, Chapter 12, Article 8871, Vernon's Texas Code Annotated]; and Washington [Section 18.175.010, et. seq., Washington Business and Professions Code].

SECTION 102. DEFINITIONS. In this [Act]:

(2) "Agency contract" means an agreement in which a student-athlete authorizes an athlete agent to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(4) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or who, directly or indirectly, contacts, recruits, or solicits a student-athlete to enter into an agency contract, a professional sports services contract, or an endorsement contract. The term does not include an individual acting solely on behalf of a professional sports team or professional sports organization or an individual acting solely for his or her spouse, child, grandchild, or ward. The term includes an individual who holds himself or herself out as an athlete agent.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered programs for male students and female students, the athletic
program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to induce or attempt to induce a student-athlete to enter into an agency contract, professional sports services contract, or endorsement contract. Contact does not include estimates of the position in any professional draft the student-athlete could reasonably expect to have.

(5) "Endorsement contract" means a contract under which a student-athlete is employed or receives remuneration consideration to utilize use on behalf of the other contracting party any value or utility that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "Professional-sports-services contract" means a contract under which a student-athlete an individual is employed or agrees to render services as a player on a professional sports team or professional sports organization or as a professional athlete.

(8) "Registration" means registration as an athlete agent pursuant to this [Act].

(9) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) "Student-athlete" means an individual who engages in, is eligible to engage
in, or may be eligible in the future to engage in, any intercollegiate sport.

If an individual is not a student-athlete if the individual is ineligible to participate in a particular sport, unless: the individual is not a student-athlete for purposes of that sport.

(A) the individual's eligibility to participate in that particular sport is restored; or

(B) the individual is eligible to engage in, or may be eligible in the future to engage in, a different intercollegiate sport, in which case the individual is a student-athlete for purposes of the different sport.

Reporter's Notes

In paragraph (1), the definition of "athlete agent" is limited to individuals, i.e., a corporation that employs athlete agents would not be required to register as an athlete agent but the individuals would. The term includes not only an individual who enters into an agency contract with a student-athlete but also the "runners" agents use to recruit the student-athlete to sign with a particular agent. The Drafting Committee considered and decided against exclusions for individuals otherwise licensed by the State, such as attorneys. The committee did not intend to require an attorney to register as an athlete agent in order to render legal services, as opposed to services as an athlete agent, to a student-athlete.

In paragraph (10), "student-athlete" is defined to allow the Act to apply to a two-sport athlete who has signed a professional contract in one sport but has eligibility remaining in another sport. It is also defined to include individuals who are not yet in college or even eligible for college in an attempt to prevent agents from inducing high school students to jeopardize their college eligibility. It is also defined to include a high school dropout who may become eligible by completing a GED and a high school graduate who does not go to college immediately.

SECTION 103 3. ADMINISTRATION. The [Secretary of State] shall administer this [Act].

Reporter’s Notes

The Secretary of State appears to be a common office to administer an athlete agent registration program.
SECTION 104. ATHLETE AGENTS: REGISTRATION REQUIRED.

(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State, or make contact with a student-athlete who is attending or has expressed a written intention to attend an educational institution in this State, before registering with the [Secretary of State].

(b) An individual who is not registered as an athlete agent in this State may make contact with a student-athlete if:

(1) the student-athlete or an individual on behalf of the student-athlete initiates communication with the individual; and

(2) within seven days after the contact made by the individual in response to the student-athlete's initiation of communication, the individual files an application to register as an athlete agent in this State.

(c) An agency contract resulting from an act conduct in violation of this section is void and no individual owes any money or other consideration under the contract. The athlete agent shall return any money or other consideration received under the contract.

Reporter's Notes

In subsection (a), although not dealt with specifically, the Committee thought it clear that an individual in State A contacting a student-athlete in State B is acting as an athlete agent in both states.

In subsection (b), the Committee intended to allow an individual to respond to inquiries before being required to register as an athlete agent.

In subsection (c), the intention of the Drafting Committee was to discourage inappropriate contacts by making any resulting agency contract void and allowing a student-athlete to keep any inducement given to him or her to enter into the void contract.
REQUIREMENTS.

(a) An applicant for registration as an athlete agent shall submit a written application for registration to the [Secretary of State] on a form prescribed by the [Secretary of State]. [An application filed under this section is a public record]. Except as otherwise provided in subsection (b), the application must state or contain:

1. the name of the applicant and the address of the applicant's principal place of business;

2. the name of the applicant's firm, business or employer, if applicable;

3. any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

4. a description of the applicant's:
   (A) formal training as an athlete agent;
   (B) practical experience as an athlete agent; and
   (C) educational background relating to the applicant's activities as an athlete agent;

5. the names and addresses of three individuals not related to the applicant who can provide references;

6. the name, sport, and last known team, club, or organization of all individuals represented by for whom the applicant provided services as an athlete agent during the five years next preceding the date of submission of the application;

7. the names and addresses of all persons who have a financial interest in the operation of the business conduct of the applicant as an athlete agent including partners, associates, or profit-sharers, but not including other than employees on fixed salaries;
(8) any crime, other than a minor traffic offense, of which the applicant has been convicted;

(8) whether the applicant or any other person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude, and identify the crime.

(9) any administrative or judicial determination that the applicant, as an athlete agent, has made a false, misleading, deceptive, or fraudulent representation as an athlete agent;

(10) any instance in which the actions conduct of the applicant or any other person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) any sanction, suspension, or disciplinary action taken against the applicant or any other person named pursuant to paragraph (7) arising out of the applicant's occupational or professional conduct misconduct in his or her occupation or profession;

(12) any denial of an application or suspension, revocation, for, suspension or revocation of, or refusal to renew, the applicant's registration or licensure of the applicant or any other person named pursuant to paragraph (7) as an athlete agent in any State; and

(13) the applicant's signature under penalty of perjury.

(b) An individual who has filed submitted an application to be for registration or licensure as an athlete agent in another State, in lieu of filing submitting an application in this State, may file submit a copy of the application from the other State. The [Secretary
of State] shall accept the application from the other State as an application for registration
in this State if the application from the other State:

(1) was filed in the other State within the next preceding last six
months or

the applicant certifies the information contained in the application is current; and

(2) contains information substantially similar to or more detailed than that
required in an application filed in this State; and

(3) was filed under penalty of perjury.

Reporter's Notes

Most of the requirements in subsection (a) are fairly common to registration acts.
The Committee felt that paragraph (7), and paragraphs (9) to (12), inclusive, were critical
to evaluating the qualifications of an athlete agent.

With regard to (a)(6), the Committee recognized that athlete agents who are attorneys
may serve the client in a dual capacity. It was the intention of the Committee however, to
have the Act override any special privileges an attorney might have. In other words, if an
attorney acts as an athlete agent in negotiating an endorsement contract, the attorney
would not be able to assert an attorney-client privilege with respect to the existence of the
contract.

With regard to subsection (b), the athlete agent industry felt, and the Committee
agreed, that it was important to allow a single registration in those States enacting the
Act.

SECTION 106. ISSUANCE, DENIAL, SUSPENSION, REVOCATION OF,
OR REFUSAL TO RENEW CERTIFICATE OF REGISTRATION; ISSUANCE
OR DENIAL.

(b)(a) Except as otherwise provided in subsection (c), the [Secretary of State]
shall issue a certificate of registration to an individual who complies with Section 405
(a) A certificate of registration is valid for [two] years.

(b) Except as otherwise provided in subsection (c), the [Secretary of State] shall issue a certificate of registration to an individual who has complied with Section 355(b) and submits satisfactory proof that the individual is licensed or registered or licensed in the State in which the application submitted pursuant to Section 355(b) was filed and if the [Secretary of State] determines the requirements for licensure or registration or licensure in the other State are substantially similar to or more stringent than those of this State.

(c) The [Secretary of State] may refuse to issue a certificate of registration if the [Secretary of State] determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's credibility, honesty, or integrity, or ability to serve as an athlete agent. In making the determination, the [Secretary of State] may consider whether the applicant has:

1. been convicted of a crime that, if committed in this State, would be a felony or a misdemeanor crime involving moral turpitude;
2. knowingly made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application;
3. engaged in acts that would disqualify the applicant from serving in a fiduciary capacity;
4. committed any act prohibited by Section 115; or
5. had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any State; or
6. taken action engaged in conduct or failed to engage in conduct the
consequence of which was that resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution.

(d) In making a determination under subsection (c), the [Secretary of State] shall consider:

1. the period between the conduct and the application;
2. the nature of the conduct and the context in which it occurred; and
3. any activity conduct of the applicant since the conduct under subsection (c) which demonstrates that the conduct is unlikely to recur.

Reporter's Notes

The intention of subsections (c) and (d) is not to have certain conduct automatically disqualify an individual from registration, but to allow the licensing agency to make a qualitative determination of the likelihood the individual, if registered, would engage in conduct detrimental to a student-athlete or an educational institution, or both.

SECTION 107. RENEWAL.

(a) An athlete agent may apply to renew a registration by filing submitting an application for renewal in a form prescribed by the [Secretary of State]. The application for renewal must contain current information on matters required in an original registration.

(b) An individual who has submitted an application for renewal of registration or licensure in another State, in lieu of filing submitting an application for renewal in this State, may file a copy of the application for renewal from the other State. The [Secretary of State] [shall] [may] accept the application for renewal from the other State as an application for renewal in this State if the application for renewal of
registration or licensure from the other State:

(1) the application from the other State was filed submitted in the other State within the six months or the applicant certifies the information contained in the application for renewal is current; and

(2) the application for renewal from the other State contains information substantially similar to or more detailed than that required in an application for renewal filed submitted in this State.

(c) A renewal of a registration is valid for two years.

Reporter's Notes

The Committee felt that renewal of registration ought to utilize renewals in other States in the same way that original registrations do.

SECTION 108. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW

REGISTRATION. The [Secretary of State] may suspend, revoke, or refuse to renew a registration for any reason conduct that would have justified denial of a registration under Section 1066(c).

Reporter's Notes

The Committee intended that the issuance of a temporary license should be discretionary and the discretion should be cast in terms broad enough to include issuing a license in contested cases. The Committee did not feel it necessary that a temporary license had to be issued to protect an individual who had student-athlete initiated contact with a student-athlete under Section 4(b), since all that is required of the individual is that an application for registration be filed.

SECTION 109. TEMPORARY REGISTRATION. The [Secretary of State] may issue a temporary certificate of registration while considering an application for registration or renewal.
SECTION 110. REGISTRATION FEE. An application for registration or
renewal of registration must be accompanied by a fee in the following amount:

(1) [$] for an initial application for registration;

(2) [$] for an application for registration based upon a certificate of registration or
licensure issued by another State;

(3) [$] for an application for renewal of registration; or

(4) [$] for an application for renewal of registration based upon an application for
renewal of registration or licensure filed in another State.

Reporter's Notes

Although the question is one for each State to determine for itself, the Committee felt
that most States would be inclined to set fees in amounts to recover the costs of
registration. In that case, a registration or renewal fee based on a registration or renewal
in another State ought to be less than a registration or renewal fee where the registering
State was required to evaluate the application rather than determine whether one had been
issued in another State and the status of that State's law on athlete agents.

SECTION 111. LIABILITY INSURANCE.

(a) An application for registration or renewal must be accompanied by evidence
of errors and omissions liability insurance covering errors and omissions applicable to the
activities of an athlete agent in the amount of [($100,000)] or equivalent security.

(b) If an athlete agent fails to provide evidence of errors and omissions
liability insurance covering errors and omissions in the amount of [$100,000] or
equivalent security to the [Secretary of State] within 30 days after receipt of a notice of
cancellation issued by an insurer, the [Secretary of State] shall suspend the certificate of
registration issued to the athlete agent until the athlete agent provides evidence of
errors and omissions liability insurance coverage for errors and omissions in the amount
of [$100,000] or equivalent security.

Reporter's Notes

Since there was no clear indication that a multi-state errors and omissions policy for athlete agents is available, the Committee did not address directly whether an athlete agent operating in multiple States could furnish a single policy applicable to all States in which the agent operates or would be required to have a separate policy in each State.

SECTION 122. FORM OF CONTRACT.

(a) An [Notwithstanding [the Uniform Electronic Transactions Act], an agency contract must be in writing, signed by the student-athlete and, if the student-athlete is a minor, by a parent or guardian of the student-athlete[;] [and the court having jurisdiction], and a copy must be furnished the athlete agent shall give a copy of the contract to the student-athlete at the time of signing.

(b) An agency contract must state or contain:

(1) the amount and method of calculating the money or other consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for obtaining entering into the contract or will receive for providing the contractual services;

(2) the name of any person not listed in the application for registration who or renewal that will receive any portion of the compensation consideration;

(3) a description of any expenses that the student-athlete agrees to reimburse;

(4) a description of the services to be furnished provided to the student-athlete; and

(5) the duration of the contract.
(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE**

**IF YOU SIGN THIS CONTRACT, YOU WILL LOSE YOUR ELIGIBILITY TO COMPETE NONPROFESSIONALLY IN YOUR SPORT. BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE ONE, IF YOU SIGN THIS CONTRACT. IF YOU SIGN, YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

(d) An agency contract that does not conform to this section is voidable by the student-athlete.

**Reporter's Notes**

With respect to subsection (a), the Committee, in view of the disparity in sophistication between the parties, felt it be important there be a hard copy of the contract.

With regard to subsection (b), the Committee was particularly concerned with anecdotal information that "gifts," such as automobiles, given to student-athletes to induce them to enter into agency contracts are in fact loans that are repaid from the student-athlete's future earnings. Accordingly, the Committee sought to have the contract clearly disclose those types of arrangements.

In subsection (d), the Committee felt that since the student-athlete loses eligibility when an agency contract is signed, a contract that does not comply with this section ought to give the student-athlete the benefit of his or her bargain and therefore should be voidable at the option of the student-athlete. The student-athlete would exercise this option under Section 14 and would be entitled to keep any inducements received from the agent. This should be contrasted with an agency contract with an individual required to register as an athlete agent but who did not. In that case, the Committee felt the student-athlete should not be able, in effect, to ratify an unlawful agreement.
SECTION 113. NOTICE TO EDUCATIONAL INSTITUTION.

(a) Within 72 hours after entering into an agency contract or before the student-athlete participates in the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give written notice of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the student-athlete participates in the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

SECTION 114. STUDENT-ATHLETE'S RIGHT TO CANCEL.

(a) A student-athlete may cancel an agency contract by giving written notice to the athlete agent of the cancellation within 14 days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not obligated to pay any consideration to the athlete agent and the student-athlete is not required to return anything of value or other consideration received from the agent to induce the signing of the contract.

Reporter's Notes

The Committee intended to have the inducement worded as broadly as possible so that other consideration is included even if it is not a thing of value in the normal sense.
SECTION 115. PROHIBITED ACTS.

(a) An athlete agent may not do any of the following to induce a student-athlete to enter into an agency contract:

(1) give any false or misleading information or make a false promise or representation;

(2) furnish anything of value or benefit other consideration to a student-athlete before signing an agency contract with the student-athlete; or

(3) furnish anything of value or benefit other consideration to any individual other than the student-athlete before signing the agency contract with the student-athlete.

(b) An athlete agent may not:

(1) predate or postdate any agency contract, professional-sports-services contract, or endorsement contract;

(2) do business engage in conduct as an athlete agent without complying with this [Act];

(3) initiate contact with a student-athlete before being unless registered under this [Act]; or

(4) refuse or willfully fail to maintain or permit inspection of the records required by Section 116.

SECTION 116. RECORDKEEPING.

(a) An athlete agent shall maintain at the athlete agent’s place of business for five years a copy of any agency contract entered into between the athlete agent and a student-athlete for a period of five years.
(b) Information required by subsection (a) to be maintained is open to inspection by the [Secretary of State] during normal business hours.

SECTION 117. CIVIL REMEDIES.

(a) An athlete agent who violates this [Act] is liable for damages caused by the violation and for reasonable attorney's fees.

(a) An educational institution has a cause of action for damages caused by a violation of this act by an athlete agent. In an action under this section, an educational institution may also recover costs and reasonable attorney’s fees.

(b) Damages of an educational institution include damages incurred because, as a result of the activities of an athlete agent, the educational institution was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action to mitigate sanctions.

(c) This [Act] does not restrict rights, remedies, or defenses under the common law or equity.

(d) A claim under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the alleged violation by the athlete agent.

Reporter's Notes

The purpose of this section is to give a cause of action to an educational institution that is sanctioned as a consequence of activities of an athlete agent. For example, in the circumstance where an athlete agent enters into an agency contract with a student-athlete and fails to notify the institution within 72 hours or prior to the next participation by the
student-athlete and the institution is disqualified from post-season participation because of that, it is the Committee's intention to create a cause of action for the resulting loss of revenue. Subsection (c) makes clear the cause of action is not the exclusive cause of action or source of damages that may be available.

SECTION 448. ADMINISTRATIVE PENALTY. The [Secretary of State] may assess a civil penalty not to exceed [$25,000] for a violation of this [Act].

Reporter’s Notes
The procedure for imposing the penalty and due process procedures are left to the adopting State’s administrative procedure law.

SECTION 449. CRIMINAL PENALTY.

[(a)] The commission of any act prohibited under Section 445 (a) or (b)(4) by an athlete agent is a [misdemeanor][felony] punishable by [ ] and revocation of the license of the athlete agent.

[(b)] A violation of Section 13(b) by a student-athlete is a [misdemeanor] punishable by [____].

Reporter's Notes
The Committee recognizes that criminalizing the conduct in Section 445 (a) raises questions about interfering in legitimate contracts wherein a student-athlete, such as a football or basketball player who wants to forego some portion of their eligibility, knowingly signs a contract with an agent that will terminate his or her collegiate eligibility. However, it was felt that the large number of times when the inducements were improperly used justified the restriction, particularly when a prohibited inducement could be given after signing the contract.

SECTION 420. APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to the its subject matter of this [Act] among States
enacting that enact it.

SECTION 121. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 122. REPEALS. The following acts and parts of acts are hereby repealed:

SECTION 123. EFFECTIVE DATE. This [Act] takes effect ___________.

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