

2019 -- S 0592 SUBSTITUTE A

LC002098/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE - REVISED UNIFORM
FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Introduced By: Senators Lombardi, McCaffrey, Lynch Prata, Conley, and Archambault

Date Introduced: March 14, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 33-27 of the General Laws entitled "Access to Decedents'
2 Electronic Mail Accounts Act" is hereby repealed in its entirety.

3 ~~CHAPTER 33-27~~

4 ~~Access to Decedents' Electronic Mail Accounts Act~~

5 ~~**33-27-1. Short title.**~~

6 ~~This chapter shall be known and may be cited as the "Access to Decedents' Electronic~~
7 ~~Mail Accounts Act".~~

8 ~~**33-27-2. Definitions.**~~

9 ~~As used in this chapter:~~

10 ~~(1) "Electronic mail service provider" means any person who:~~

11 ~~(i) Is an intermediary in sending or receiving electronic mail; and~~

12 ~~(ii) Provides to end-users of electronic mail services the ability to send or receive~~
13 ~~electronic mail.~~

14 ~~(2) "Electronic mail account" means:~~

15 ~~(i) All electronic mail sent or received by an end-user of electronic mail services provided~~
16 ~~by an electronic mail service provider that is stored or recorded by such electronic mail service~~
17 ~~provider in the regular course of providing such services; and~~

18 ~~(ii) Any other electronic information stored or recorded by such electronic mail service~~

1 ~~provider that is directly related to the electronic mail services provided to such end user by such~~
2 ~~electronic mail service provider, including, but not limited to, billing and payment information.~~

3 ~~**33-27-3. Access to decedents' electronic mail.**~~

4 ~~An electronic mail service provider shall provide, to the executor or administrator of the~~
5 ~~estate of a deceased person who was domiciled in this state at the time of his or her death, access~~
6 ~~to or copies of the contents of the electronic mail account of such deceased person upon receipt~~
7 ~~by the electronic mail service provider of:~~

8 ~~(1) A written request for such access or copies made by such executor or administrator,~~
9 ~~accompanied by a copy of the death certificate and a certified copy of the certificate of~~
10 ~~appointment as executor and administrator; and~~

11 ~~(2) An order of the court of probate that by law has jurisdiction of the estate of such~~
12 ~~deceased person, designating such executor or administrator as an agent for the subscriber, as~~
13 ~~defined in the Electronic Communications Privacy Act, 18 U.S.C. § 2701, on behalf of his/her~~
14 ~~estate, and ordering that the estate shall first indemnify the electronic mail service provider from~~
15 ~~all liability in complying with such order.~~

16 ~~**33-27-4. Violation of federal law.**~~

17 ~~Nothing in this chapter shall be construed to require an electronic mail service provider to~~
18 ~~disclose any information in violation of any applicable federal law.~~

19 ~~**33-27-5. Severability.**~~

20 ~~If any provision of this chapter or the application of it to any person or circumstances is~~
21 ~~held invalid, that invalidity shall not affect other provisions or applications of the chapter, which~~
22 ~~can be given effect without the invalid provision or application, and to this end the provisions of~~
23 ~~this chapter are declared to be severable.~~

24 SECTION 2. Title 33 of the General Laws entitled "PROBATE PRACTICE AND
25 PROCEDURE" is hereby amended by adding thereto the following chapter:

26 CHAPTER 27.1

27 REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

28 ~~**33-27.1-1. Short title.**~~

29 ~~This chapter shall be known and may be cited as "The Revised Uniform Fiduciary Access~~
30 ~~to Digital Assets Act".~~

31 ~~**33-27.1-2. Definitions.**~~

32 ~~For the purposes of this chapter:~~

33 ~~(1) "Account" means an arrangement under a terms-of-service agreement in which a~~
34 ~~custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides~~

- 1 goods or services to the user.
- 2 (2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable
3 power of attorney.
- 4 (3) "Carries" means engages in the transmission of an electronic communication.
- 5 (4) "Catalogue of electronic communications" means information that identifies each
6 person with which a user has had an electronic communication, the time and date of the
7 communication and the electronic address of the person.
- 8 (5) "Conservator" means a person appointed by a court to administer the property of a
9 living individual pursuant to chapter 15 of title 33. The term includes a limited conservator.
- 10 (6) "Content of an electronic communication" means information concerning the
11 substance or meaning of the communication which:
- 12 (i) Has been sent or received by a user;
- 13 (ii) Is in electronic storage by a custodian providing an electronic communication service
14 to the public or is carried or maintained by a custodian providing a remote computing service to
15 the public; and
- 16 (iii) Is not readily accessible to the public.
- 17 (7) "Court" means a court of competent jurisdiction, including the probate court and the
18 superior court.
- 19 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a
20 digital asset of a user.
- 21 (9) "Designated recipient" means a person chosen by a user using an online tool to
22 administer digital assets of the user.
- 23 (10) "Digital asset" means an electronic record in which an individual has a right or
24 interest. The term does not include an underlying asset or liability unless the asset or liability is
25 itself an electronic record.
- 26 (11) "Electronic" means relating to technology having electrical, digital, magnetic
27 wireless, optical, electromagnetic, or similar capabilities.
- 28 (12) "Electronic communication" has the meaning set forth in 18 U.S.C. § 2510 et seq., as
29 amended.
- 30 (13) "Electronic communication service" means a custodian that provides to a user the
31 ability to send or receive an electronic communication.
- 32 (14) "Fiduciary" means an original, additional, or successor personal representative,
33 guardian, conservator, agent, or trustee.
- 34 (15) "Guardian" means a person appointed by the court to make decisions regarding the

1 estate of a living individual, including a person appointed pursuant to chapter 15 of title 33. The
2 term includes a limited guardian.

3 (16) "Information" means data, text, images, videos, sounds, codes, computer programs,
4 software, databases, or the like.

5 (17) "Online tool" means an electronic service provided by a custodian that allows the
6 user, in an agreement distinct from the terms-of-service agreement between the custodian and
7 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

8 (18) "Person" means an individual, estate, partnership, association, trust, business or
9 nonprofit entity, public corporation, government or governmental subdivision, agency, or
10 instrumentality, or other legal entity.

11 (19) "Personal representative" means an executor, administrator, special administrator or
12 person that performs substantially the same function under law of this state other than this
13 chapter.

14 (20) "Power of attorney" means a record that grants an agent authority to act in the place
15 of a principal.

16 (21) "Principal" means an individual who grants authority to an agent in a power of
17 attorney.

18 (22) "Protected person" means an individual for whom a guardian or conservator has
19 been appointed pursuant to chapter 15 title 33.

20 (23) "Record" means information that is inscribed on a tangible medium or that is stored
21 in an electronic or other medium and is retrievable in perceivable form.

22 (24) "Remote computing service" means a custodian that provides to a user computer-
23 processing services or the storage of digital assets by means of an electronic communications
24 system, as defined in 18 U.S.C. § 2510 et seq., as amended.

25 (25) "Terms-of-service agreement" means an agreement that controls the relationship
26 between a user and a custodian.

27 (26) "Trustee" means a fiduciary with legal title to property under an agreement or
28 declaration that creates a beneficial interest in another. The term includes a successor trustee.

29 (27) "User" means a person that has an account with a custodian.

30 (28) "Will" includes a codicil, a testamentary instrument that only appoints an executor,
31 and an instrument that revokes or revises a testamentary instrument.

32 **33-27.1-3. Applicability.**

33 (a) This chapter applies to:

34 (1) A fiduciary acting under a will or power of attorney executed before, on or after the

1 effective date of this chapter:

2 (2) A personal representative acting for a decedent who died before, on, or after the
3 effective date of this chapter.

4 (3) A guardian or conservator appointed before, on, or after the effective date of this
5 chapter; and

6 (4) A trustee acting under a trust created before, on, or after the effective date of this
7 chapter.

8 (b) This chapter applies to a custodian if the user resides in this state or resided in this
9 state at the time of the user's death.

10 (c) This chapter does not apply to a digital asset of an employer used by an employee in
11 the ordinary course of the employer's business.

12 **33-27.1-4. User direction for disclosure of digital assets.**

13 (a) A user may use an online tool to direct the custodian to disclose to a designated
14 recipient or not disclose some or all of the user's digital assets, including the content of electronic
15 communications. If the online tool allows the user to modify or delete a direction at all times, a
16 direction regarding disclosure using an online tool overrides a contrary direction by the user in a
17 will, trust, power of attorney, or other record.

18 (b) If a user has not used an online tool to give direction under subsection (a) of this
19 section or if the custodian has not provided an online tool, the user may allow or prohibit in a
20 will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's
21 digital assets, including the content of electronic communications sent or received by the user.

22 (c) A user's direction under subsection (a) or (b) of this section overrides a contrary
23 provision in a terms-of-service agreement that does not require the user to act affirmatively and
24 distinctly from the user's assent to the terms of service.

25 **33-27.1-5. Terms of service agreement.**

26 (a) This chapter does not change or impair a right of a custodian or a user under a
27 terms-of-service agreement to access and use digital assets of the user.

28 (b) This chapter does not give a fiduciary or designated recipient any new or expanded
29 rights other than those held by the user for whom, or for whose estate, the fiduciary or designated
30 recipient acts or represents.

31 (c) A fiduciary's or designated recipient's access to digital assets may be modified or
32 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not
33 provided direction under § 33-27.1-4.

34 **33-27.1-6. Procedure for disclosing digital assets.**

1 (a) When disclosing digital assets of a user pursuant to one or more of §§ 33-27.1-7
2 through 33-27.1-15, the custodian may at its sole discretion:

- 3 (1) Grant a fiduciary or designated recipient full access to the user's account;
4 (2) Grant a fiduciary or designated recipient partial access to the user's account sufficient
5 to perform the tasks with which the fiduciary or designated recipient is charged; or
6 (3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that
7 on the date the custodian received the request for disclosure, the user could have accessed if the
8 user were alive and had full capacity and access to the account.

9 (b) A custodian may assess a reasonable administrative charge for the cost of disclosing
10 digital assets under this chapter.

11 (c) A custodian need not disclose under this chapter a digital asset deleted by a user.

12 (d) If a user directs or a fiduciary requests a custodian to disclose under this chapter
13 some, but not all, of the user's digital assets, the custodian need not disclose the assets if
14 segregation of the assets would impose an undue burden on the custodian. If the custodian
15 believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an
16 order from the court to disclose:

- 17 (1) A subset limited by date of the user's digital assets;
18 (2) All of the user's digital assets to the fiduciary or designated recipient;
19 (3) None of the user's digital assets; or
20 (4) All of the user's digital assets to the court for review in camera.

21 **33-27.1-7. Disclosure of content of electronic communications of deceased user.**

22 If a deceased user consented or a court directs disclosure of the contents of electronic
23 communications of the user, the custodian shall disclose to the personal representative of the
24 estate of the user the content of an electronic communication sent or received by the user if the
25 representative gives the custodian:

- 26 (1) A written request for disclosure in physical or electronic form;
27 (2) A certified copy of the death certificate of the user;
28 (3) A certified copy of the letter of appointment of the representative or a small estate
29 affidavit or court order;
30 (4) Unless the user provided direction using an online tool, a copy of the user's will, trust,
31 power of attorney, or other record evidencing the user's consent to disclosure of the content of
32 electronic communications;

33 (5) A number, username, address, or other unique subscriber or account identifier
34 assigned by the custodian to identify the user's account;

- 1 (6) Evidence linking the account to the user;
2 (7) A finding by the court that disclosure of the content of electronic communications of
3 the user is reasonably necessary for the administration of the estate; and
4 (8) If requested by the custodian, a finding by the court that:
5 (i) The user had a specific account with the custodian, identifiable by the information
6 specified in subsection (5) of this section;
7 (ii) Disclosure of the content of electronic communications of the user would not violate
8 18 U.S.C. Section 2701, et seq., as amended, 47 U.S.C. Section 222, et seq., as amended, or other
9 applicable law; or
10 (iii) Unless the user provided direction using an online tool, the user consented to
11 disclosure of the content of electronic communications.

12 **33-27.1-8. Disclosure of other digital assets of deceased user.**

13 Unless the user prohibited disclosure of digital assets or the court directs otherwise, a
14 custodian shall disclose to the personal representative of the estate of a deceased user a catalogue
15 of electronic communications sent or received by the user and digital assets, other than the
16 content of electronic communications of the user, if the representative gives the custodian:

- 17 (1) A written request for disclosure in physical or electronic form;
18 (2) A certified copy of the death certificate of the user;
19 (3) A certified copy of the letter of appointment of the representative or a small estate
20 affidavit or court order; and
21 (4) A number, username, address, or other unique subscriber or account identifier
22 assigned by the custodian to identify the user's account;
23 (5) Evidence linking the account to the user;
24 (6) A finding by the court that disclosure of the user's digital assets is reasonably
25 necessary for administration of the estate; and
26 (7) If requested by the custodian, a finding by the court that the user had a specific
27 account with the custodian, identifiable by the information specified in subsection (4) of this
28 section.

29 **33-27.1-9. Disclosure of content of electronic communications of principal.**

30 To the extent a power of attorney expressly grants an agent authority over the content of
31 electronic communications sent or received by the principal and unless directed otherwise by the
32 principal or the court, a custodian shall disclose to the agent the content if the agent gives the
33 custodian:

- 34 (1) A written request for disclosure in physical or electronic form;

1 (2) An original or copy of the power of attorney expressly granting the agent authority
2 over the content of electronic communications of the principal;

3 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in
4 effect;

5 (4) A number, username, address, or other unique subscriber or account identifier
6 assigned by the custodian to identify the principal's account; and

7 (5) Evidence linking the account to the principal.

8 **33-27.1-10. Disclosure of other digital assets of principal.**

9 Unless otherwise ordered by the court, directed by the principal, or provided by a power
10 of attorney, a custodian shall disclose to an agent with specific authority over digital assets or
11 general authority to act on behalf of a principal a catalogue of electronic communications sent or
12 received by the principal and digital assets, other than the content of electronic communications,
13 of the principal if the agent gives the custodian:

14 (1) A written request for disclosure in physical or electronic form;

15 (2) An original or a copy of the power of attorney that gives the agent specific authority
16 over digital assets or general authority to act on behalf of the principal;

17 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in
18 effect; and

19 (4) A number, username, address or other unique subscriber or account identifier
20 assigned by the custodian to identify the principal's account; and

21 (5) Evidence linking the account to the principal.

22 **33-27.1-11. Disclosure of digital assets held in trust when trustee is original user.**

23 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to
24 a trustee that is an original user of an account any digital asset of the account held in trust,
25 including a catalogue of electronic communications of the trustee and the content of electronic
26 communications.

27 **33-27.1-12. Disclosure of content of electronic communications held in trust when**
28 **trustee is not original user.**

29 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
30 custodian shall disclose to a trustee that is not an original user of an account the content of an
31 electronic communication sent or received by an original or successor user and carried,
32 maintained, processed, received, or stored by the custodian in the account of the trust if the
33 trustee gives the custodian:

34 (1) A written request for disclosure in physical or electronic form;

1 (2) A certified copy of the trust instrument that includes consent to disclosure of the
2 content of electronic communications to the trustee;

3 (3) An affidavit or memorandum by the trustee, under penalty of perjury, pursuant to §
4 34-4-27, that the trust exists and the trustee is a currently acting trustee of the trust; assigned by
5 the custodian to identify the trust's account;

6 (4) A number, username, address, or other unique subscriber or account identifier
7 assigned by the custodian to identify the trust's account; and

8 (5) Evidence linking the account to the trust.

9 **33-27.1-13. Disclosure of other digital assets held in trust when trustee is not original**
10 **user.**

11 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
12 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of
13 electronic communications sent or received by an original or successor user and stored, carried or
14 maintained by the custodian in an account of the trust and any digital assets, other than the
15 content of electronic communications, in which the trust has a right or interest if the trustee gives
16 the custodian:

17 (1) A written request for disclosure in physical or electronic form;

18 (2) A certified copy of the trust instrument;

19 (3) An affidavit or memorandum by the trustee, under penalty of perjury, pursuant to §
20 34-4-27, that the trust exists and the trustee is a currently acting trustee of the trust;

21 (4) A number, username, address, or other unique subscriber or account identifier
22 assigned by the custodian to identify the trust's account; and

23 (5) Evidence linking the account to the trust.

24 **33-27.1-14. Disclosure of digital assets to guardian or conservator of protected**
25 **person.**

26 (a) After an opportunity for a hearing under chapter 15 of title 33, the court may grant a
27 guardian or conservator access to the digital assets of a protected person.

28 (b) Unless otherwise ordered by the court or directed by the user, a custodian shall
29 disclose to a guardian or conservator the catalogue of electronic communications sent or received
30 by a protected person and any digital assets, other than the content of electronic communications,
31 in which the protected person has a right or interest if the guardian or conservator gives the
32 custodian:

33 (1) A written request for disclosure in physical or electronic form;

34 (2) A certified copy of the court order that gives the guardian or conservator authority

1 over the digital assets of the protected person; and

2 (3) A number, username, address, or other unique subscriber or account identifier
3 assigned by the custodian to identify the account of the protected person;

4 (4) Evidence linking the account to the protected person; and

5 (5) A finding by the court that disclosure of the digital assets of the user is reasonably
6 necessary for the performance of the duties of the guardian or conservator.

7 (c) A guardian or conservator with general authority to manage the assets of a protected
8 person may request a custodian of the digital assets of the protected person to suspend or
9 terminate an account of the protected person for good cause. A request made under this section
10 must be accompanied by a certified copy of the court order giving the guardian or conservator
11 authority over the protected person's property.

12 **33-27.1-15. Fiduciary duty and authority.**

13 (a) The legal duties imposed on a fiduciary charged with managing tangible property
14 apply to the management of digital assets, including:

15 (1) The duty of care;

16 (2) The duty of loyalty; and

17 (3) The duty of confidentiality.

18 (b) A fiduciary's or designated recipient's authority with respect to a digital asset of a
19 user:

20 (1) Except as otherwise provided in § 33-27.1-4, is subject to the applicable terms of
21 service;

22 (2) Is subject to other applicable law, including copyright law;

23 (3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

24 (4) May not be used to impersonate the user.

25 (c) A fiduciary with authority over the property of a decedent, protected person, principal,
26 or settlor has the right to access any digital asset in which the decedent, protected person,
27 principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-
28 of-service agreement.

29 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
30 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
31 computer fraud and unauthorized computer access laws, including chapter 52 of title 11.

32 (e) A fiduciary with authority over the tangible, personal property of a decedent protected
33 person, principal, or settlor.

34 (1) Has the right to access the property and any digital asset stored in it; and

1 (2) Is an authorized user for the purpose of computer fraud and unauthorized computer
2 access laws, including chapter 52 of title 11.

3 (f) A custodian may disclose information in an account to a fiduciary of the user when the
4 information is required to terminate an account used to access digital assets licensed to the user.

5 (g) A fiduciary of a user may request a custodian to terminate the user's account. A
6 request for termination must be in writing, in either physical or electronic form, and accompanied
7 by:

8 (1) If the user is deceased, a certified copy of the death certificate of the user;

9 (2) A certified copy of the letter of appointment of the representative or a small estate
10 affidavit, court order, power of attorney, or trust giving the fiduciary authority over the account;

11 (3) A number, username, address, or other unique subscriber or account identifier
12 assigned by the custodian to identify the user's account;

13 (4) Evidence linking the account to the user; and

14 (5) If the user is a decedent or protected person:

15 (i) A finding by the court that termination of the account is reasonably necessary for the
16 administration of the estate of a decedent or the performance of the duties of the conservator or
17 guardian; and

18 (ii) If requested by the custodian, a finding by the court that the user had a specific
19 account with the custodian, identifiable by the information specified in subsection (g)(3) of this
20 section.

21 (h) This chapter does not affect any right or remedy of a protected person, a principal, a
22 beneficiary or an estate against a guardian or conservator, an agent, a trustee, or a personal
23 representative, respectively, for any violation of this chapter by such fiduciary.

24 **33-27.1-16. Custodian compliance and immunity.**

25 (a) Not later than sixty (60) days after receipt of the information required under §§ 33-
26 27.1-7 through 33-27.1-15, a custodian shall comply with a request under this chapter from a
27 fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian
28 fails to comply, the fiduciary or designated recipient may apply to the court for an order directing
29 compliance.

30 (b) An order under subsection (a) of this section directing compliance must contain a
31 finding that compliance is not in violation of 18 U.S.C. Section 2702, et seq., as amended.

32 (c) Wherever practicable, a custodian shall notify the user or the user's account that a
33 request for disclosure or to terminate an account was made under this chapter.

34 (d) A custodian may deny a request under this chapter from a fiduciary or designated

1 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any
2 lawful access to the account following the receipt of the fiduciary's request.

3 (e) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
4 designated recipient requesting disclosure or termination under this chapter to obtain a court order
5 which:

6 (1) Specifies that an account belongs to the protected person or principal;

7 (2) Specifies that there is sufficient consent from the protected person or principal to
8 support the requested disclosure; and

9 (3) Contains a finding required by law other than this chapter.

10 (f) A custodian and its officers, employees and agents are immune from liability for an
11 act or omission done in good faith in compliance with this chapter, the Electronic
12 Communications Privacy Act, 18 U.S.C. § 2701 et seq., and all applicable state and federal laws.

13 **33-27.1-17. Uniformity of application and construction.**

14 In applying and construing this uniform act, consideration must be given to the need to
15 promote uniformity of the law with respect to its subject matter among states that enact it.

16 **33-27.1-18. Relation to electronic signatures in global and national commerce act.**

17 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
18 National Commerce Act. 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede
19 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15
20 U.S.C. Section 7003(b).

21 **33-27.1-19. Severability.**

22 If any provision of this chapter or its application to any person or circumstance is held
23 invalid, the invalidity does not affect other provisions or applications of this chapter which can be
24 given effect without the invalid provision or application, and to this end the provisions of this
25 chapter are severable.

26 SECTION 3. This act shall take effect upon passage.

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LC002098/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE - REVISED UNIFORM
FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

- 1 This act would regulate fiduciary and designated recipient access to digital assets relating
- 2 to probate practice and procedure by creating the "Revised Uniform Fiduciary Access to Digital
- 3 Assets Act" to promote uniformity of the law among states that enact it.
- 4 This act would take effect upon passage.

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