

# ALERT

VOLUME 33, NUMBER 3 • FEBRUARY 2, 2007



## CalChamber to Advise ARB on Climate Change Law



Dominic DiMare, vice president of government relations for the California Chamber of Commerce, will represent the business perspective as part of an advisory committee on the state's

new law capping carbon emissions.

The 18-member Economic and Technology Advancement Advisory Committee will advise the state Air Resources Board (ARB) as it identifies and assesses technology development and research opportunities that will help reduce greenhouse gas emissions.

The committee also will make recommendations on funding and incentive options.

"I look forward to working with the oth-

er members of this committee to find and support ways in which California can move to the forefront in advancing technology and leading the development of climate change mitigation solutions for California and the rest of the globe," said DiMare.

Creation of the advisory committee is required by the law calling for California to reduce greenhouse gas emissions to 1990 levels by 2020, AB 32 (Núñez; D-Los Angeles; Chapter 488, Statutes of 2006).

The committee includes representatives from business and industry, academia, environmental interests and business development.

### Former Cal/EPA Secretary

Chairing the advisory committee is Dr. Alan Lloyd, former secretary of the California Environmental Protection Agency

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## Court to Review Common Contract Clause at Request of CalChamber



At the urging of the California Chamber of Commerce, the California Supreme Court has agreed to review the enforceability of general release clauses and narrowly tailored covenants not to compete that commonly are used in

business transactions.

Opening briefs were filed with the Supreme Court on January 26.

In the case of *Edwards v. Arthur Andersen LLP*, the 2nd District Court of Appeal ruled that general release clauses are unenforceable if they fail to expressly exclude the numerous claims that are statutorily prohibited from being waived. In addition, the court ruled that narrowly tailored non-compete clauses are invalid in California.

### Small Business Impact

Although the ruling will have an impact on all businesses, there is no doubt that small businesses, many of which rely on standard contract provisions, will be hit the hardest. Most small businesses do not have the resources to support a legal staff that can navigate the business through California's sea of laws.

As a result, many businesses turn to simple contract forms that provide the basic provisions needed to offer some level of protection. The idea that small busi-

*See Court: Page 3*

## Senate Republicans Present Health Care Plan

Senate Republicans this week outlined their proposal for improving California's health care system.

The Republican senators described their proposal — called Cal CARE — as using existing dollars to address health care accessibility, affordability and responsibility.

To reduce demands on costly, overcrowded emergency rooms, the Senate Republicans propose expanding clinics and emphasizing preventive medicine.

The Senate Republicans also propose using tax incentives to encourage individuals and businesses to buy health care coverage, as well as allowing employers that provide health care to offer flexible work hours.

Proposed changes in the Medi-Cal

program aim to make benefits more closely match those of private plans.

The Senate Republican Caucus highlighted key features of the plan in a chart based on the comparison done by the Senate Office of Research in January

between proposals of Governor Arnold Schwarzenegger (R), Senate President Pro Tem Don Perata (D-Oakland) and Assembly Speaker Fabian Núñez (D-Los Angeles), which appeared in the January 26 *Alert*.

The chart summarizing the Senate Republican proposal begins on Page 4 of this *Alert*.

**Key Features  
Chart: Pages 4-5**

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*Labor Law Corner*

**Tally Travel Time When Calculating Non-Exempt Employee Pay**



**Jessica Hawthorne**  
Employment Law  
Counsel

*Do I have to pay non-exempt employees for time spent traveling to and attending a conference?*

Employers must pay non-exempt employees for any time they are “suffered or permitted” to work — in other words, if they are there because

you are requiring them to be there, you have to pay them.

**Pay for Travel**

If you are requiring non-exempt employees to attend a conference away from their typical workplace, they must be paid for the time spent traveling to and from the conference, minus the time of their usual commute. If air travel is required, you must pay employees (subtracting their usual commute time) from the time they leave their house until they reach their destination, such as their hotel. If the employee is free to do what he/she chooses — go to the pool, sightsee, etc. — your obligation to pay ends. If the employee goes straight to the conference, you must continue to pay him/her.

Travel time may be paid at a rate lower than the regular hourly rate as long as it is at least the minimum wage — now \$7.50 per hour. Employees also must take meal and rest breaks. It is important that employees keep an accurate account of their time when traveling to make sure overtime is calculated properly.

**Illustrating Travel Pay**

For example: Joe is attending a conference in New York on behalf of his company. He took a direct flight to New York, but has to change planes in Houston on his way back. He also is arriving a day early so he can catch up with some college friends.

His usual commute is 45 minutes and he lives 45 minutes from the airport. He arrives at the airport two hours before his flight. His flight is six hours and he arrives at his hotel a half-hour later, at midnight, and goes to sleep. Pay owed? Assuming Joe took his 30-minute meal break and his rest breaks, eight hours of pay.

He spends the next day with his friends and does not leave for the conference, which is at his hotel, until the following morning. No pay is owed for that day. He attends the conference over the next two days, arriving at the conference at 8:30 a.m., taking a one-hour lunch break, and is done for the day at 4:30 p.m. He is owed seven hours of pay for each day.

On the way home, Joe leaves the hotel

**Example: Figuring Joe’s Travel Pay**

Hours worked	How paid
Hours 1-8	Straight time
Hours 9-12	Time-and-one-half
Hours 12-14	Double time
Hours 15	Beginning of a new 24-hour period—straight time

at 9 a.m. for the airport, a one-hour drive away, and arrives one hour before his flight leaves. His flight to Houston is four hours and he has a three-hour layover, which is extended to six hours because of delays. His flight home takes four more hours. Arriving at 1 a.m. the following day, Joe drives the 45 minutes home. Joe was “suffered or permitted” to work from 9 a.m. until he got into his car to drive home, or for 16 hours.

He should have taken at least two meal breaks for at least one-half hour and, assuming he did so, he must be paid for 15 hours of pay (see chart): the first eight hours at straight time, the ninth through 12th hours at time-and-one-half, and the remaining time at double pay — minus one hour. The final hour of his paid time is on a new day — from 12:01 a.m. until 1 a.m. If Joe’s company is on a typical workday (12:01 a.m. through midnight), then the last hour of his pay is at the regular rate.

Accurate record keeping is imperative in such scenarios. Employers should communicate with non-exempt employees regarding these obligations, particularly when the employee is traveling. When employees travel to a different time zone, recommend that they keep track of their hours on California time to avoid confusion. Consistent communication by e-mail or telephone also can cut down on later disputes regarding hours actually worked.

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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## Court Agrees to CalChamber Request to Review Common Contract Clause

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nesses may have to spell out every single item the release does and does not cover will consume significant time, cost and resources that small businesses do not have.

### Ruling Raises Question

The court of appeal ruling calls into question when and under what circumstances employers may use general release clauses and narrowly tailored non-compete clauses in business transactions.

Many types of agreements contain broad release clauses simply because it is impossible, in light of California's

complex and intricate labor, employment and tort laws, just to name a few, to anticipate every possible claim or issue that cannot be waived by agreement. Businesses rely on standard release clauses to protect themselves adequately, knowing that many claims cannot be waived.

Unfortunately, the *Edwards* decision cast doubt on every release agreement entered into between California employers and employees.

### Courts Disagree

The enforceability of release clauses as well as non-compete clauses have been the subject of many California cases, with courts in disagreement over

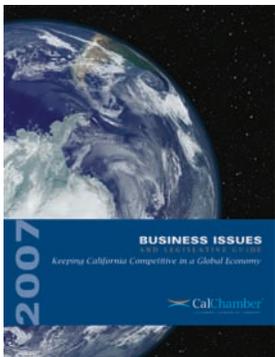
what is and is not permissible as a matter of law. Businesses throughout California rely on a firm interpretation of the law to help guide their daily decisions.

Because of the inconsistent rulings among the courts, however, businesses become victims of different interpretations of the law, resulting in increased litigation, increased costs and great uncertainty as to whether their actions are within the law. This uncertainty is compounded when, as in many cases, businesses operate across multiple state lines.

The Supreme Court's review of the case will help to alleviate the confusion.

**Staff Contact: Erika Frank**

## CalChamber Annual Issues Guide Now on Web, in Mail to Members



The 2007 edition of the California Chamber of Commerce **Business Issues and Legislative Guide** is now available on the CalChamber website at

[www.calchamber.com/businessissues](http://www.calchamber.com/businessissues). A hard copy of the **Guide** also has been mailed to CalChamber preferred and executive members.

This year's theme is "**Keeping California Competitive in a Global Economy.**" The **Guide** covers issues that have a direct impact on the ability of employers to manage their businesses in a cost-competitive manner, including climate change, education, transportation and health care.

The publication also offers a section

on the CalChamber's efforts to recruit and elect pro-jobs policymakers, a topic that debuted in last year's edition.

In addition to articles highlighting key issues, the **Guide** includes issue summaries on other areas where CalChamber policy advocates expect legislative activity in 2007; brief biographies of the CalChamber's policy team; a guide to contacting legislators; glossary of government terms; state government organization chart; pictorial roster of statewide officials, the California Legislature and California congressional delegation; and tips on talking with the media.

Additional hard copies of the guide are available for \$10 each plus 7.25 percent sales tax (7.75 percent in Sacramento County) and \$3 shipping/handling per book. Orders must be prepaid. Please mail requests with payment to California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736, Attn: Business Issues.

## CalChamber-Sponsored Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Transforming Fear to Action. Wilcox Miller & Nelson. February 13, Sacramento. (916) 977-3700.

### International Trade

5th Annual California Debates. Northern California World Trade Center. February 26, Sacramento. (916) 319-4276.

4th Annual Global California Conference. Monterey Bay International Trade Association. March 16, Sacramento. (831) 335-4780.

Sub-Saharan Africa Information and Communications Technology Conference. U.S. Trade and Development Agency. March 19-21, San Francisco. (305) 667-4705.

### Labor Law

HR 101: Introduction to HR Administration. California Chamber of Commerce. February 6 - Sacramento. (800) 331-8877.

Labor Law Update: HR 201. California Chamber of Commerce. February 7 - Sacramento (sold out); February 13 - Online (2 hours). (800) 331-8877.

## CalChamber Calendar

### Board of Directors:

March 8-9, Beverly Hills

California Business Legislative Summit:

May 21-22, Sacramento

# Senate GOP Releases Health Care Proposal

## Cal CARE Senate Republican Plan

<b>Individuals Covered</b>	<ul style="list-style-type: none"> <li>● Every Californian will have improved access with more health care options and services that are more affordable and cost-efficient.</li> <li>● Reallocates First Five money for children's health care.</li> </ul>
<b>Individual Mandate</b>	<ul style="list-style-type: none"> <li>● None.</li> <li>● Tax Equalization: People purchasing insurance in the individual market should receive the same tax benefit as an employer purchasing coverage for its employees.</li> </ul>
<b>Employer Mandate; Employee Responsibility</b>	<ul style="list-style-type: none"> <li>● No employer mandate.</li> <li>● Provides employers who offer health insurance incentives like flex-time and other employer/employee agreed upon benefits.</li> </ul>
<b>Medi-Cal Rate Increase</b>	<ul style="list-style-type: none"> <li>● Yes. Increase rates closer to Medicare. <ul style="list-style-type: none"> <li>✓ Makes rate increases a budget priority, starting with the lowest rates first, over the next eight years.</li> </ul> </li> </ul>
<b>Purchasing Pool</b>	No.
<b>Individual Contribution to Obtain Coverage through Purchasing Pool</b>	Not applicable.
<b>Medi-Cal/Healthy Families Expansion/Changes</b>	<ul style="list-style-type: none"> <li>● Realign Medi-Cal benefits to more closely mirror the private health care benefits received by other taxpayers. Requires the Department of Health Services to make the necessary changes.</li> <li>● Reallocates First Five funds for children's health care initiatives.</li> </ul>
<b>Tax and Regulatory Incentives For Individuals</b>	<ul style="list-style-type: none"> <li>● State tax conformity on Health Savings Accounts (HSA).</li> <li>● Tax Equalization: People purchasing insurance in the individual market should receive the same tax benefit as an employer purchasing coverage for its employees.</li> </ul>

## Cal CARE Senate Republican Plan

<b>Tax and Regulatory Incentives For Employers</b>	<ul style="list-style-type: none"> <li>● Encourage all employers to establish "Section 125 plans," allowing employees to use pre-tax income for health expenses.</li> <li>● Permit employers who offer health insurance incentives like flex time and other employer/employee agreed on benefits.</li> </ul>
<b>Tax and Regulatory Incentives Providers</b>	<ul style="list-style-type: none"> <li>● Provide hospitals and physicians a tax credit to purchase health care information technology (IT), such as electronic medical records and telemedicine.</li> <li>● Establish a low-interest loan program to help non-profit hospitals and medical groups for investment in health care IT.</li> <li>● Establish a tax credit for the cost of providing care for the uninsured.</li> </ul>
<b>Insurance Market Reforms</b>	<ul style="list-style-type: none"> <li>● Encourage greater availability of benefit designs that conform to existing federal requirements for HSA-eligible High Deductible Health Plans (HDHPs) to provide necessary coverage for major illnesses and catastrophic care.</li> <li>● Require Department of Managed Health Care and Department of Insurance to allow health plans and insurers to place more products on the market to increase consumer choice.</li> <li>● Have California lead by example regarding product innovation and consumer choice by requiring Cal-PERS to offer HDHPs and HSAs to state employees.</li> <li>● Permit greater flexibility for coverage rates, reflecting lifestyle behaviors, in the Small Group Market.</li> </ul>
<b>Improve Access to Medical Services</b>	<ul style="list-style-type: none"> <li>● Expand care by allowing hospitals to offer preventive services-only coverage, giving them flexibility to redirect uncovered patients with treatment at hospital or community-based clinics before they arrive at the emergency room with non-emergencies.</li> <li>● Encourage more clinics by allowing RNs to run clinics; adjust physician oversight requirements to improve access to primary care in underserved areas.</li> <li>● Encourage more clinics by reallocating a portion of state-only health care programs to expand services delivered through primary care clinics.</li> <li>● Encourage more clinics by reallocating a portion of the \$2 billion currently allocated to disproportionate share hospitals (DSH) to fund clinic creation and expansion.</li> <li>● Realignment and extension of coverage for the "uninsurable" needy population by using Proposition 99 funds.</li> </ul>

# CalChamber Committee Examines Governor's Health Care Proposal

Governor Arnold Schwarzenegger's proposal for fixing the state's health care system is the topic of discussion at the January 30 meeting of the California Chamber of Commerce Health Care Policy Committee, led by Vice Chair Stephen Carley of El Pollo Loco (speaking). At right is Marti Fisher, the CalChamber policy advocate for health care issues. The committee is examining how various proposals affect health care affordability and access and the state's economic competitiveness.



## Senate GOP Releases Health Care Proposal

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Cal CARE Senate Republican Plan		Cal CARE Senate Republican Plan	
<b>Cost Containment</b>	<ul style="list-style-type: none"> <li>● Expansion of clinics to be used over emergency rooms for non-emergency services.</li> <li>● Transparency: The expansion of more affordable health coverage products available for consumers creates the need for pricing information to become more readily available by hospitals and providers for different health services.</li> <li>● Seismic Safety Reform: A new prioritization system should be implemented by first focusing on the hospitals most at risk.</li> <li>● Provide Appropriate Due Process to Assist Hospitals from Being Blocked by Bureaucracies or Special Interests: Hospital access to state-sponsored support should be based on sound public policy, not dictated by entrenched bureaucracies or special interests. (Additionally, see Insurance Market Reforms.)</li> </ul>	<b>Financing: State and Local Government</b>	<ul style="list-style-type: none"> <li>● Reallocate a substantial part of the \$2 billion provided annually to DSH hospitals to be used to create and expand primary care clinics.</li> <li>● Realigning Medi-Cal to private benefits will generate substantial savings. The savings can be applied to increasing Medi-Cal reimbursement rates.</li> <li>● Use Proposition 99 funds to fund the waiting list for Major Risk Medical Insurance Program (MRMIP).</li> <li>● Reallocate \$500 million from First Five to children health care initiatives.</li> <li>● Reallocate a substantial part of the \$300 million spent on state-only Medi-Cal and health programs to offset tax expenditures.</li> </ul>
<b>Financing: Federal Government</b>	Send federal government the bill for \$2.2 billion, which is the cost of providing federally mandated health care services to illegal immigrants.	<b>Financing: State-Mandated Out-of-Pocket Expenses</b>	None.
		<b>Implementation Timeline</b>	January 1, 2008.

Source: Senate Republican Caucus, January 30, 2007

# Study Finds More Residents Continue to Leave California for Other States

California is continuing to lose more residents to other states than it is gaining from people moving here, according to the latest migration study by United Van Lines.

The relative level of outbound migration did decline somewhat in 2006, with California experiencing the lowest percentage of outbound moves in four years, the *2006 Migration Study* reported.

United Van Lines has been tracking where its customers moved from and the most popular destinations since 1977.

## Outbound State

The study found outbound moves accounted for 53.9 percent of shipments handled by United for California versus 46.1 percent inbound moves.

That was a drop from 2005, when United Van Lines found that 55.7 percent of moves it handled were leaving California, making it a “high outbound” state — a category the moving company defines as a state where 55 percent or more of the moves are leaving. California had not been in that category for the preceding 10 years.

The United Van Lines statistics mirror figures released in December 2006 by the California Department of Finance. The department reported that

although the state’s population grew overall, 67,000 more people left for other states than moved here.

## Inbound States

Among the states classified as “high inbound” in the 2006 United Van Lines study were California’s neighbors — Oregon, Nevada and Arizona. Oregon had the second highest inbound ranking with 62.5 percent of moves ending there, continuing a 19-year trend of high inbound movement.

Nevada continued its 20-year streak as a high inbound state with 59.9 percent, while Arizona dropped 5 percentage points from the previous year, but still experienced 55.4 percent inbound traffic.

In 2006, New Mexico saw an increase in inbound traffic to 57.9 percent (3.7 percentage points higher than the previous year). Utah had 56 percent inbound traffic, a rise of 6 percentage points. Idaho had 59.3 percent inbound traffic, qualifying as a high inbound state for the 19th consecutive year. Montana had 55 percent inbound moves, retaining its status as a high inbound state for the fifth year.

The Southeastern states saw many new residents in 2006. North Carolina came in as the top destination with 64 percent inbound moves. South Carolina followed

closely with 60.6 percent, making it an inbound state for the 13th year. Alabama experienced its fourth year as a high inbound location, being the destination for 57.5 percent of moves.

## Other Outbound Trends

Outbound moves generally exceeded inbound ones in the Central Northeastern states. Tied at Number 1 on the high outbound list were Michigan and North Dakota with 66 percent of moves ending elsewhere.

Other states on the high outbound list were:

- New York (59.5 percent), which has been an outbound state for 30 years;
- Indiana (58.2 percent), which has been a high outbound state since 1993; and
- Illinois (55.7 percent), which also has been a high outbound state for 30 years.
- New Jersey (60.9 percent), a trend that has been going strong since 1997;
- Pennsylvania (57 percent), which has experienced high outbound traffic for the last three years; and
- Ohio (55.8 percent), an outbound state since 1992.

## CalChamber to Advise ARB on State’s Climate Change Law

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and a former chair of the ARB. Lloyd now serves as president of the International Council on Clean Transportation (ICCT). He holds a B.S. in chemistry and Ph.D. in gas kinetics from the University College of Wales, Aberystwyth, United Kingdom.

Sponsored by the William and Flora Hewlett Foundation and the Energy Foundation, the ICCT is made up of regulators and experts from leading auto markets around the world who participate as individuals based on their experience with air quality and transportation issues.

The stated goal of the ICCT is to

dramatically improve the environmental performance and efficiency of cars, trucks, buses and transportation systems to protect and improve public health, the environment and quality of life.

## Committee Vice Chair

The vice chair of the advisory committee is Bob Epstein, co-founder of Environmental Entrepreneurs (E2), as well as four information technology firms: Sybase, Inc., GetActive Software, Zight (Colorado Microdisplay) and Britton-Lee. Epstein is an engineer with a Ph.D. from the University of California, Berkeley.

E2 describes itself as “a national com-

munity of business people who believe in protecting the environment while building economic prosperity.” E2 works with the Natural Resources Defense Council (NRDC), which has headquarters in New York, and states that contributions for E2 membership are made directly to the NRDC.

The network of more than 2,000 people works at both the state and national levels. More than 600 members from 22 states work in technology, consulting, venture capital, financial services and a number of other sectors.

**Staff Contact: Amisha Patel**

## CalChamber Members Earn Accolades for Environmental, Economic Leadership

Six members of the California Chamber of Commerce are among the recipients of the state's highest environmental honor, the Governor's Environmental and Economic Leadership Award (GEELA).

The California Environmental Protection Agency presented the GEELA in December 2006 to individuals, organizations and businesses playing outstanding leadership roles in conserving natural resources, protecting the environment and building partnerships that further both environmental and business goals.

Governor Arnold Schwarzenegger said the GEELA recipients "have demonstrated a tremendous commitment to preserving our natural resources, while also contributing greatly to our economy."

### Award Categories

Awards are given in five categories:

- Sustainable Practices or Facilities;
- Children's Environmental Education;
- Environmental and Economic Partnerships;
- Ecosystem and Watershed Stewardship;
- Sustainable Communities.

### Award Winners

CalChamber members earning the GEELA include:

#### *Sustainable Practices or Facilities*

- **State of California Auto Dismantlers Association (SCADA).** SCADA's Partners in the Solution certification program requires all the

organization's members to meet specific environmental, safety, and business and licensing standards and audits members to maintain and improve performance. The program's benefits include preventing hazardous and reusable components from entering the conventional waste stream, preventing improper disposal of vehicles and protecting air and water quality.

#### *Children's Environmental Education*

- **PG&E Solar Schools Program.** In its third year, the Pacific Gas and Electric Company's Solar Schools Program provides funding to support solar-based education programs in public schools in underserved communities in Northern and Central California. In 2006, PG&E awarded \$1.7 million in grants to schools to install solar generation systems and to provide solar-based training curricula and money for solar science projects.

#### *Environmental and Economic Partnerships*

- **Vulcan Materials Company.** In partnership with the U.S. Fish and Wildlife Service and the Riverside Land Conservancy, the Vulcan Materials Company endowed 150 acres of land to create the Colton Dunes Conservation Bank, the largest protected area of critical habitat for the endangered Delhi Sands flower-loving fly, a pollinating insect (similar to a hummingbird) whose only known habitat is in a small region in which the Conservation Bank is located. Vulcan Materials Company has funded an endowment for permanent habitat maintenance.

- **PG&E and the California Farm Bureau Federation.** The Agricultural Internal Combustion Engine Conversion Incentive (AG-ICE) program is a partnership among businesses, associations, agricultural and environmental groups, and local, state and federal agencies that encourages PG&E's agricultural customers to convert voluntarily to less-polluting electric-powered irrigation pumps. AG-ICE offers reduced electricity rates, limits annual rate increases and offers financial assistance for up-front costs to successful applicants.

- **Goodwill Industries of San Francisco, San Mateo and Marin Counties.** In partnership with Dell Inc., Goodwill Industries operates ReConnect San Francisco. Launched in July 2005, the program diverts e-waste from landfills and into the hands of resale customers. Goodwill collects donated computer equipment and sorts it for recycling or refurbishment and resale. During its first year, the program diverted nearly 2 million pounds of e-waste from landfills. Goodwill reinvests proceeds in a variety of job creation and community programs.

- **Hearst Corporation.** In conjunction with various land trusts and the State of California, the Hearst Corporation worked to preserve in perpetuity 128 square miles (82,000 acres) of habitat for more than 1,000 plant and animal species, including an elephant seal rookery, more than 19 beaches, coastal creeks, and bluff, prairie and maritime chaparral habitat.



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