
GENERAL NOTICE

NOTICE 939 OF 2013

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS OF THE DRAFT MERCHANT SHIPPING AMENDMENT BILL, 2013

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication in the *Gazette*.

Submission should be posted to the Director – General Department of Transport for the attention of Mr. Trevor Mphahlele or Bernard Maphalela

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REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary
of Bill published in Government Gazette No. 36839 of 11-9-13) (The English text is the
official text of the Bill*

(MINISTER OF TRANSPORT)

[B—2013]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments
- _____ Words underlined with a solid line indicate insertions in existing enactments
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BILL

To amend the Merchant Shipping Act, 1951, so as to give effect to the Maritime Labour Convention, 2006 and the Work in Fishing Convention, 2007; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982, section 1 of Act 25 of 1985, section 1 of Act 18 of 1992, section 1 of Act 16 of 1995, section 1 of Act 49 of 1996, section 1 of Act 23 of 1997, section 2 of Act 5 of 1998, section 1 of Act 57 of 1998 and section 60 of Act 58 of 1998

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of the definition of "**apprentice-officer**";

(b) by the insertion of the following definition after the definition of "**fishing boat**"

" '**fishing vessel**' means a fishing vessel as defined in the Marine Living Resources Act, 1998 (Act No. 18 of 1998);";

(c) by insertion after the definition of "**marine notice**" of the following definition:

" '**Maritime Labour Convention**' means Maritime Labour Convention, 2006, done at Geneva on 7 February 2006, as set forth in the Seventh Schedule, and as modified by any amendment made under Article X1V of that Convention that has entered into force in the Republic;";

(d) by insertion after the definition of "**whaling boat**" of the following definition;

" '**Work in Fishing Convention**' means Work in Fishing Convention, 2007, done at Geneva on 30 May 2007, as set forth in the Eighth Schedule, and as modified by any amendment made under article 45 of that Convention that has entered into force in the Republic;";

(e) by the substitution for the definition of "**seaman**" of the following definition:

" '**seaman**' means any person (except a master, pilot or [**apprentice-officer**] cadet) employed or engaged in any capacity as a member of the crew of a ship and "seafarer" has a corresponding meaning.";

(f) by the substitution for the definition of "**South African ship**" of the following definition:

" 'South African ship' means a ship that is registered or licenced in the Republic;"

Substitution of section 91 of Act 57 of 1951

2. The following section is hereby substituted for section 91 of the principal Act:

"Excessive number of cadets [or apprentice-officers] not to be employed

91. No person shall engage or permit cadets **[or apprentice-officers]** to serve on board a South African ship in excess of the number of cadets **[or such officers]** permitted by the regulations."

Substitution of section 92 of Act 57 of 1951

3. The following section is hereby substituted for section 92 of the principal Act:

"Medical examination of cadets [and apprentice-officers]

92. No person shall be employed as a cadet on board any South African ship **[or indentured as an apprentice-officer to the owner of a South**

African ship] until **[he] that person** has passed the colour and form vision tests prescribed and has been certified by a medical practitioner approved by the proper officer as physically fit for the sea service."

Repeal of sections 93, 94, 95, 96, 97, 98, 99 and 100 of Act 57 of 1951

4. Sections 93, 94, 95, 96, 97, 98, 99 and 100 of the principal Act are hereby repealed.

Amendment of section 102 of Act 57 of 1951, as amended by section 9 of Act 42 of 1969

5. Section 102 of the principal Act is hereby amended—
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The master of every South African ship **[of more than one hundred gross register tons]** shall **[, and the master of every other South African ship may,]** enter into an agreement on behalf of the employer (in this Act called the agreement with the crew) with every seaman whom **[he] the master** engages to serve in that ship: Provided that the proper officer may refuse to allow the engagement of a seaman—";

(b) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

"(f) the wages which each seaman is to receive, must include particulars of the basic wages to be paid, payments to be made for overtime, bonuses, allowances paid, paid leave or any other additional payments, or in the case of a fishing vessel, the basic daily rate and commission scales;"

- (c) by the deletion in subsection (3) of the full stop at the end of paragraph (h) and the substitution therefor of a semi colon and by the addition after paragraph (h) of the following paragraphs:

"(i) the amount of a seaman's entitlement to annual leave or, where applicable, the formula used for calculating the annual leave and the remuneration payable during that period of leave;

(j) the health and social security protection benefits to be provided to the seaman by the owner of a ship;

(k) the seaman's entitlement to repatriation;

(l) reference to any collective bargaining agreement, where applicable;

(m) the minimum notice period that can be given by the seaman or the owner of a ship, which shall not be less than seven calendar days."

- (d) by the addition after subsection (4) of the following subsection:

"(5) (a) In respect of all ships, except with respect to fishing vessels—

'basic wages' means the remuneration for normal working hours, eight hours in a day, and does not include payments made for overtime, bonuses, allowances paid, paid leave or any other additional payments;
'overtime' means time worked in excess of the normal working hours and includes work undertaken on Saturdays, Sundays and officially declared public holidays.

(b) With regard to fishing vessels if there is in place an agreement with the employer covering wages and conditions of employment agreed to under a registered bargaining council or statutory council in terms of the Labour Relations Act , 1995 (Act No. 66 of 1995) , then the terms of such agreement shall apply to the employment of the seaman concerned."

Substitution of section 110 of Act 57 of 1951, as amended by section 22 of Act 40 of 1963

6. The following section is hereby substituted for section 110 of the principal Act:

"Employment of children on ships prohibited

110. The owner or master of a South African ship [which is registered in the Republic], or of a ship which is not registered in the Republic and is

wholly engaged in plying between ports in the Republic, shall not knowingly take into employment or keep in employment or permit the employment of any person under the age of [~~fifteen~~] sixteen years in any capacity on board the ship."

Amendment of section 111 of Act 57 of 1951, as amended by section 2 of Act 5 of 1998

7. Section 111 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Employment of young person's [as trimmers or firemen]";

(b) by the substitution in subsection (1) for the words preceding the proviso of the following words:

"Subject to the provisions of this section the owner or master of a South African ship shall not [~~knowingly take into employment, or keep in employment, or~~] permit [~~the employment of,~~] a young person [~~as a trimmer or fireman in that ship~~] to work at night:";

(c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) this subsection shall not apply—

(i) to the employment of a young person on such work as aforesaid in school-ship or training-ship, if the work is of a

kind approved by the Authority and is carried on subject to supervision by officers approved or appointed by it; **[or]**

(ii) **[to the employment of a young person on such work as aforesaid in a ship which is mainly propelled otherwise than by means of steam; and] if the effective training of the young person concerned would be impaired; or**

(iii) **if the specific nature of the training requires that the young person must perform duties at night.**";

(d) by the deletion in subsection (1) of paragraph (b);

(e) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) There shall be included in every agreement with the crew of a South African ship a list of the young persons who are members of the crew **[, together with particulars of the dates of birth, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if young persons are employed therein, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or cease to be members of the crew].**

(3) There shall be included in every agreement with the crew of a South African ship a short summary of the provisions of this section.";

(f) by the deletion of subsections (4) and (5); and

(g) by the insertion in subsection (8) before the definition of "young person" of the following definition:

"'night' means a period of at least nine hours, starting no later than midnight ship's time and ending not earlier than 05:00 ship's time."

Insertion of section 111A of Act 57 of 1951

8. The following section is hereby inserted in the principal Act after section 111:

"Entitlement to leave

111A. (1) Every seaman employed or engaged on a ship that is registered or licensed in the Republic shall be entitled to leave accrued at the rate of at least 2.5 days per month of employment, except in case of a seaman employed onboard a fishing vessel subject to an agreement concluded with a registered bargaining or statutory council in which case the terms of such agreement shall apply.

(2) Leave is deemed to commence when the seaman arrives at his or her proper return port.

(3) In this section "month" means a period of 30 days, and includes Saturdays, Sundays and public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994)."

Substitution of section 116 of Act 57 of 1951

9. The following section is hereby substituted for section 116 of the principal Act:

"Discharge of seamen on change of ownership

116. (1) If a South African ship is transferred or disposed of while she is at or on a voyage to any port outside the Republic every seaman [**or apprentice-officer**] belonging to that ship shall be discharged at that port, unless he consents in writing in the presence of a proper officer to complete the voyage in the ship if continued.

(2) If a seaman or apprentice-officer is discharged from a South African ship in terms of subsection (1), the provisions of section one hundred and fourteen shall apply as if the service of the seaman [**or apprentice-officer**] had terminated without his consent and before the expiration of the period for which the seaman was engaged [**or the apprentice-officer was indentured,**] and[, in the case of a seaman,] the provisions of the said section shall, notwithstanding subsection (3) thereof, be applicable whatever may be his nationality and wherever may be situated the port where he was engaged.

(3) Every seaman [**or apprentice-officer**] discharged in terms of subsection (1) shall, if the voyage for which he was engaged is not continued,

be entitled to the wages to which he would have been entitled if his service had been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged [or the apprentice-officer was indentured].".

Amendment of section 121 of Act 57 of 1951, as amended by section 19 of Act 30 of 1959 and by section 13 of Act 42 of 1969

10. Section 121 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) [When a seaman of a South African ship is discharged, the] The master or the owner of [such] a South African ship shall cause to be delivered to [such] a seaman a full and true account of his or her wages in a form approved by the Authority, on monthly basis or in the case of a seaman employed on board a fishing vessel, on the day of arrival in port after month end where the total period between delivery of accounts and the preceding account shall not exceed 45 days.".

Amendment of section 130 of Act 57 of 1951, as amended by section 16 of Act 3 of 1982 and section 5 of Act 18 of 1992

11. Section 130 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), a seaman engaged on a South African ship may before the commencement of a voyage make stipulations for the payment during his absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of seamen and registered under the **[National Welfare Act 100 of 1978]** Advisory Board on Social Development Act, 2001 (Act No. 3 of 2001), of any portion of the wages which he may earn during the voyage.

(b) by the substitution for subsection (2) of the following subsection:

"(2) Allotment notes may provide for any portion or all of a seaman`s wages to any person designated by him or her to be the recipient of such wages or part thereof."; and

(c) by the addition after subsection (5) of the following subsection:

"(6) The master, owner or authorized agent of the owner shall bear the costs incurred in effecting payment of the allotment of all or part of a seaman`s wages.".

Insertion of section 159A of Act 57 of 1951

12. The following section is hereby inserted in the principal Act after section 158:

"Complaints procedure on board ship

159A. (1) A master or owner of a South African ship shall draw up and keep on board a complaints procedure, not in conflict with the provisions of this Act, and shall make such complaints procedure available to all seamen;

(2) If a seaman of a South African ship considers that his or her rights in terms of the Maritime Labour Convention, have been breached, he or she may lodge a complaint with the master.

(3) On receiving a complaint from the seafarer which was made in terms of subsection 2, the master shall—

(a) record the complaint in the official log-book;

(b) investigate the complaint or cause it to be investigated;

(c) attempt to resolve the complaint within twenty four hours; and

(d) record his or her findings and any action taken in the official log-book.

(4) If the complaint remains unresolved, the seaman may lodge that complaint with the Authority, who will adjudicate over the complaint."

Amendment of section 162 of Act 57 of 1951

13. Section 162 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If **[three or more]** a seamen **[or apprentice officers]** of a South African ship **[consider]** considers—".

(b) by the substitution in subsection (1) for paragraphs (a) and (c) of the following paragraphs, respectively:

"(a) that the provisions or water for the use of the **[seamen or apprentice-officers]** seaman are at any time of bad quality or deficient in quantity; or

(c) that in any other respect the conditions under which the **[or apprentice-officers are seamen]** seaman is living on board ship are not of a reasonably good standard, **[they]** he or she may complain thereof to the proper officer, who shall investigate the complaint or cause it to be investigated.";

(c) by the substitution in subsection (2) for the words following paragraph (c) of the following words:

"as the case may be, he or she shall communicate that finding in writing to the master.";

(d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"Upon the finding being communicated to him or her, the master shall forthwith—";

(e) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

"(c) if the finding is in terms of paragraph (c) of subsection (2), take steps to the satisfaction of the proper officer to ensure that the

living conditions of the **[seamen and apprentice-officers are]**
seaman are of a reasonably good standard;"

(f) by the substitution for subsection (5) of the following subsection:

"(5) If the said officer certifies in that statement that there was no reasonable ground for the complaint, **[each of]** the **[complainants]** **complainant** shall, if so directed by the officer in the certificate, forfeit to the owner out of his or her wages a sum to be determined by the proper officer, but not exceeding one week's wages."

Amendment of section 169 of Act 57 of 1951

14. Section 169 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

"(1) If the master or a seaman **[or apprentice-officer]** of a South African ship receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his own wilful act or default or to his own misbehaviour), resulting in his being discharged or left behind at a place other than his proper return port, the expense of providing the necessary medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the said master, seaman or apprentice-officer in a manner appropriate to his rank or rating, until he is cured or dies or is returned to and arrives at a proper return port, and of his conveyance to that port, and in case of death the expense of his burial, shall be defrayed by the owner of the ship,

without any relative deduction from the wages of the master[,] or seaman [or apprentice-officer] concerned.

(2) If the master or seaman [or apprentice-officer] is on account of any illness or injury temporarily removed from his ship, at a port other than his proper return port, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expenses of removal, medical attendance and treatment, and of maintenance while the master[,] or seaman [or apprentice-officer] is away from the ship, shall be defrayed in like manner.

(3) The expenses of all medical attendance and treatment given to a master[,] or seaman [or apprentice-officer] whilst on board his ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master[,] or seaman[, or apprentice-officer] in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any master[,] or seaman [or apprentice-officer] who dies whilst on service, shall, if proved to the satisfaction of the proper officer, be deducted from the salary or wages of the master, seaman or apprentice-officer."

Amendment of section 341 of Act 57 of 1951, as amended by section 57 of Act 69 of 1962

15. Section 341 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) that any offence against property or person has been committed at any place, either ashore or afloat, outside any treaty country by any master[,]
or seaman[, or apprentice-officer] who at the time when the offence was committed, or within three months before that time, was employed in any South African ship; or

(b) that any offence on the high seas has been committed by any master[,]
or seaman[, or apprentice-officer] belonging to any South African ship, that consular representative may inquire into the case and may, if in his opinion reasonable grounds of suspicion exist against the alleged offender, take any steps in his power for the purpose of placing him under the necessary restraint and of sending him as soon as practicable in safe custody to the Republic."

Amendment of 356 of Act 57 of 1951

16. Section 356 of the principal Act is hereby amended—

(a) by the deletion in subsection (2) of the expression "and" at the end of paragraph (d) and the substitution for the full stop at the end of paragraph (e) of a semi colon; and

(b) by addition after paragraph (e) of the following paragraphs:

"(f) Maritime Labour Convention; and

(g) Work in Fishing Convention."

Deletion of certain expressions in Act 57 of 1951

17. The principal Act is hereby amended by the deletion of the expressions "or apprentice-officer", "or the apprentice-officer" or "and apprentice-officer" wherever they occur.

Short title and commencement

18. This Act is called the Merchant Shipping Amendment Act, 2013, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MERCHANT SHIPPING AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1. The Bill seeks to give effect to the Maritime Labour Convention, 2006 ("the MLC, 2006) and the Work in Fishing Convention, 2007 (C188) and to provide for matters connected therewith.
- 1.2. The MLC, 2006 and C188 was adopted under the auspices of International Labour Organization, (ILO) a United Nation body aimed at to promoting rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- 1.3. The C188 addresses inter alia the responsibilities of fishing vessel owners and skippers for the safety of the fishers on board and the safety of the vessels; minimum age for work on board fishing vessels and for assignment to certain types of activities; medical examination and certification required for work on fishing vessels; manning and hours of rest; crew lists; fishers work agreements; repatriations; recruitment and placement of fishers and the use of private employment agencies; payment of fishers; on board accommodation and food; medical care at sea; occupational safety and health; social security and protection in the case of work-related sickness, injury or death.
- 1.4. The MLC, 2006 provides a set of comprehensive rights and duties of seafarers at work. The MLC, 2006 also aims to achieve minimum working conditions of seafarers by covering a wide range of matters including working hours, health and safety, crew accommodation, seafarers, welfare and seafarer's contractual agreement.

- 1.5. The Republic of South Africa through the Department of Labour and the Department of Transport participated in the International deliberations wherein the MLC, 2006 and C188 were adopted.
- 1.6. Most of the world trade is carried on ships and seafarers are essential to international trade and the international economy and trade system. The new labour standard consolidates and updates more than 68 international labour standards related to the Maritime sector adopted over the last 80 years.
- 1.7. The MLC, 2006 and C188 has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO) such as Safety of life at Sea Convention, STCW Convention and MARPOL.
- 1.8. The Department has been working jointly with the Department of Labour on the ratification of the MLC, 2006 and C188 which will ensure global protection of the rights of seafarers and decent working and living conditions for seafarers.
- 1.9. The implementation of the MLC, 2006 and C188 is a two-fold process in a sense that the Department of Labour is responsible for attending to all necessary procedures to ensure ratification of the MLC, 2006 and C188 and on the other hand Department of Transport should ensure that domestic legislation is in place to enforce the articles of the MLC, 2006 and C188 that relate to the Department.
- 1.10 The MLC, 2006 and the C188 were approved by National Assembly on the 14th of March 2013 and National Council of Provinces (NCOP) on the 23rd April 2013 and the minutes of the proceedings are attached as annexure "B" and annexure "C".

- 1.10. The MLC, 2006 and C188 is awaiting approval from Minister of Department of International Relations and Co-operation's (DIRCO) in order to deposit the instrument of ratification with International Labour Organization Secretary-General.
- 1.11. The Department amended the Merchant Shipping Act, 1951 (Act No. 57 of 1951) to give effect to the MLC, 2006 and C188 and has attended to all necessary requirements related to amendment of the Bill.

2. CLAUSE BY CLAUSE ANALYSIS OF THE BILL

2.1 *Clause 1* amends section 2(1) of the principle act by defining and inserting words used in the Act.

2.2 *Clause 2 and 3* amends section 91 and 92 of the principle Act by deletion of the word "apprentice-officers".

2.3 *Clause 4* repeals sections 93, 94, 95, 96, 97, 98, 99 and 100 of the principle Act. This is a consequential amendment as a result of the deletion of references to apprentice –officers.

2.4 *Clause 5* amends section 102 of the principle by imposing a duty on the master of a ship to enter into an agreement with the seafarer on behalf of the employer irrespective of the size of the ship or tonnage that the ship carries.

- 2.5 *Clause 6* amends section 110 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) by inserting the words “ South African” and also prohibits the master or owner of a ship which is registered in South Africa to employ children under the age of sixteen.
- 2.6 *Clause 7* amends section 111 of the principle Act by amending the heading and also prohibits the owner or master of ship to employ young persons and also make them to work at night and also allows the master to only allow young persons to work at night if it is part of their training.
- 2.7 *Clause 8* inserts new section 111A in the Merchant Shipping Act, 1951 (Act No. 57 of 1951) to introduce entitlement of seafarer’s leave.
- 2.8 *Clause 9* amends section 116 of the principle Act by deletion of the word “or apprentice-officers”.
- 2.9 *Clause 10* amends section 121 of the principle Act by imposing a duty on the Master or ship- owner to furnish the seafarer with monthly account of his or her wages.
- 2.10 *Clause 11* amends section 130 of the principle Act by empowering the seafarer to instruct the Master or the owner of a ship by means of allotment notes to pay over any portion of his wages to a designated person in the said allotment note. The

National Welfare Act has been repealed and is called the Advisory Board on Social Development Act, 2001.

2.11 *Clause 12* insert a new section 159A that imposes a duty on the master or the owner of a ship to keep and make accessible a complaint procedure on board a ship and also allow lodging of complains by seaman individually not necessarily collectively only.

2.12 *Clause 13, 14 and 15* is a consequential amendment as a result of the deletion of references to “or apprentice-officers” .

2.13 *Clause 16* amends section 356 (2) of the principal Act by deletion of the word “and “in the paragraph and addition of the word “and “on paragraph (b) and further add paragraph “ f” and “ g” after paragraph “ e” of the principal Act.

2.14 *Clause 17* is a general amendment that indicates that the words the deletion of the words “apprentice officer” wherever it occurs.

2.15 *Clause 18* is a standard provision dealing with the short title and commencement.

3. CONSULTATION

The Bill was published for public comments in Government Gazette no: 36329 of 3 April 2013. We received comments from:

- (a) Bowman and Gilfillan.
- (b) NEDLAC
- (c) South African Maritime Authority
- (d) The Bill was also sent to the Office of the State Law Advisor for scrutiny and they have given us a preliminary certification marked and attached as annexure “E”.
- (e) The comments where necessary were incorporated in the final draft Bill

4. FINANCIAL IMPLCATION FOR STATE

There are no financial implications brought about by the draft Bill.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Transport are of the opinion that this Bill should be dealt with in terms of the procedure prescribed by the provisions of section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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